EXHIBIT B

In re Franchise Group, Inc., Feb. 19, 2025 Hr'g Tr.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11
	. Case No. 24-12480 (LSS)
FRANCHISE GROUP, INC., *et al.*,	.
	. (Jointly Administered)
	.
	. Courtroom No. 2
	. 824 Market Street
Debtors.	. Wilmington, Delaware 19801
	.
	. Wednesday, February 19, 2025
. . . . .	. 10:01 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Proceedings commence at 10:01 a.m.)

(Call to order of the Court)

THE COURT: Please be seated.

MR. MORTON: Good morning, Your Honor.

THE COURT: Good morning, Mr. Morton.

MR. MORTON: For the record, Edmon Morton from Young Conaway on behalf of the debtors.

I won't say there's new faces in the courtroom, I know you're acquainted with the Kirkland & Ellis team, but there are different faces in the courtroom this morning. As we indicated at the hearing last week, the board had already started the process of interviewing replacement counsel. They did select Kirkland & Ellis, who has been working diligently since their selection last Thursday to get underway.

So without further ado, I'll cede the podium to Mr. Sussberg to introduce his team and kind of tell you where we are.

THE COURT: Thank you.

MR. MORTON: Thank you.

THE COURT: Mr. Sussberg.

MR. SUSSBERG: Good morning, Your Honor. It's good to see you. Joshua Sussberg, Kirkland & Ellis, proposed counsel to the debtors.

I thought it would be important to start with a

moment of levity because this case has been difficult, to say the least. I spoke a few times over the weekend to Mr. Lauria, he asked me to call him last night, and I started the phone call by saying "it's Rubber Stamp Sussberg here," to which he laughed.

(Laughter)

MR. SUSSBERG: And he was very proud of himself that he was able to cite The Who in his pleading, and "Won't Get Fooled Again" was the name of the song.

THE COURT: Uh-huh.

MR. SUSSBERG: Now that song was from 1971, and that's before my time. I was --

THE COURT: Not mine.

(Laughter)

MR. SUSSBERG: I was born in '78, but --

THE COURT: I recognized it, yes.

MR. SUSSBERG: There you go. My father knew The Who and I looked at --

THE COURT: That may not be the best thing to say to me.

(Laughter)

THE COURT: "My father knew The Who." Okay.

(Laughter)

MR. SUSSBERG: And I decided to look at the lyrics, but then do some diligence.

THE COURT: Uh-huh.

MR. SUSSBERG: And in my digging, I found that the lead guitarist, Pete Townsend --

THE COURT: Uh-huh.

MR. SUSSBERG: -- he was famous for breaking guitars on stage.

THE COURT: Yes.

MR. SUSSBERG: And I said to Mr. Lauria, pretty interesting because you're known for breaking guitars.

THE COURT: Ah ...

(Laughter)

MR. SUSSBERG: I will tell you --

THE COURT: Well, I probably had that album and yes, it's an album.

MR. SUSSBERG: Absolutely.

(Laughter)

MR. SUSSBERG: No, no. I'd get you the CD or the Spotify, but ...

THE COURT: No.

(Laughter)

MR. SUSSBERG: Your Honor, Mr. Lauria's first email to me and his letter that was attached to the pleading said we need to take a reset, new counsel involved, you have to have time to do three things: One, reasonable diligence; two, provide independent advice; and three, engage with

stakeholders.

And so I want to explain to Your Honor, during the course of the status conference, which is set up first, how we checked each of those three boxes.

Myself and Ms. Greenblatt, who's here with me, Mr. McKane, Mr. Hunter, who will be presenting today, Ms. Greenblatt and I will take care of the status conference.

And before I moved forward, I did want to say it's been five days and I'd be remiss not to say thank you to the rubber stamp team from Kirkland who have been up 24 hours a day the entire time working through this to do the reasonable diligence, provide the advice, and engage with stakeholders.

I'd like to start our presentation.

Ms. Levine, do you have access?

MS. LEVINE: Not yet.

MR. SUSSBERG: Your Honor, we quickly determined, as company-side lawyers, after listening to various parties, that priority A to Z was reorganizing this company because our job as company counsel is to maximize value. And I don't think there's anyone in this room -- they reviewed the liquidation analysis, they know that there are no other alternatives other than the plan -- that would agree that, in order to maximize value, we need to preserve close to 12,000 jobs at 2,200 locations.

And if people have alternative ways to reorganize

this company, we are all ears. But the reality is this is a retail company and, for better or for worse, we have more retail experience than, I think, anyone in the country, and we've been on the wrong side of many of those retail cases. And why do you get on the wrong side of a retail case? Because vendors get nervous, vendors get scared.

And in this new day and age, vendors are listening in. And what have they heard over the last four months? Noise of conversion, appeals of critical vendor payments that were made to them, noise of trustees, delay. All of that is causing major consternation amongst the vendor base. And if there is disruption and delay and no more liquidity, this company will not be able to see it to the other side. And we owe a duty to 12,000 employees at 2,200 locations to get that done.

And I want those vendors who are listening to understand we are going to do everything in our power to move these cases forward as quickly as possible. I'll get to the schedule in a moment because we've made some adjustments to take into account the reality because the schedule wasn't credible. But the best thing for this company and the only way to maximize value is to reorganize it. And if people have objections, if people have concerns, we welcome their proposals. And we're going to talk about that and the lack thereof in a few minutes.

On the next slide, Your Honor, you know, what I'd say, over the course of five days, that we've learned, this case has gotten incredibly personal. And when cases get personal, emotions sometimes get in the way, and I've learned that firsthand in my career.

And what we wanted to do was really get the perspective of everybody involved, and so we've spoken to every single professional in this room multiple times. We also had an opportunity -- Mr. Goldstein was kind enough to set up a call with every single one of the lenders in his group because we wanted to hear from them.

And what I would tell you, Your Honor, is something you already know: We have two parties that are so dug in.

We have the 1Ls, on the one hand, who have debt that's trading around 50 cents on the dollar. They're prepared to sponsor a reorganization. They want to facilitate a reorganization, they want to save the business. And they truly believe that Mr. Shore's clients -- and he's got HoldCo clients, he's got OpCo clients, we'll get to the conflicts there. But they believe Mr. Shore's clients are wholly out of the money at both entities.

On the other hand, we have the second lien lenders. And again, I've spent time with Mr. Lauria. I go way back with Mr. Lauria and Mr. Shore, they are incredibly

effective advisors. And by the way, we don't criticize anyone for being a zealous advocate. But those second lien lenders at the OpCo, they want to sell.

And at the end of the day, I think you're going to understand that this is simply a value allocation. Is there a number at which the 1L lenders and the 2L lenders can have a meeting of the minds, or are all of those fees going to go to the professionals in this room to fight every single step along the way.

And if you look on the next slide, Your Honor, I think we demonstrate that in spades because this is everything -- and I'm not criticizing anyone in this room. It's easy for us because we've been here five days. But this is everything that's wrong with Chapter 11. This is the reason why we get on with clients and they say I want one of those liability management transactions, I don't want the litigation costs, I don't want the expense, the headache of people fighting nonstop, over and over on every single issue.

And so I said very clearly to Mr. Goldstein's clients there is two paths: One is the professionals get paid lots of money and we fight all of these issues and we win or lose and no one is making a determination today, or reasonable minds will prevail and we will get together and we will try to settle this case.

And we are making progress at setting up a meeting

next week with the principals for the 2Ls and the principals for the 1Ls. I have no idea if it's going to be successful. And I also said to Mr. Lauria there's no reason to delay these cases when liquidity is running short and we have no idea what's going to happen with settlement discussions to somehow put this reorganization at jeopardy. If we are able to settle this, that is absolutely our goal and mission, but we don't know if it's possible because parties are dug in. But I can promise the Court we will die trying, along with reorganizing this business.

On the next slide, Your Honor, you know, I think this is important because I know it was talked about during the course of the Willkie disqualification hearing, as well as your bench ruling, which we read very carefully. The first three boxes that we circled, it's important because I know there have been four iterations, and now five, of the plan. And that first iteration of the plan said those causes of action would be released subject to investigation. And then it kept moving and moving and moving to the point where, ultimately, before the disqualification hearing, all of those claims were reserved.

And now there's a trust at the HoldCo, there's a trust at the OpCo. I think we've generally satisfied the HoldCo creditors' issues because they have an opportunity to pursue those claims. I'm sure they'll have issues and

concerns along the way. But there are two trusts that preserve all claims at the HoldCo and at the OpCo.

Another thing I want to mention because it was referenced in the White & Case pleading, in June 2022, Kirkland & Ellis represented Blue Owl in connection with a sale/leaseback involving Badcock. Blue Owl gave lots of money to Badcock, Franchise Group gave a guarantee, and then Badcock sold itself to Conn's, and that's all in the disclosure statement and it's well said.

Blue Owl still has a guarantee against Franchise Group that they believe is woefully out of the money. We had filed a notice of appearance at the outset of the case because Blue Owl wanted to make sure that they got documentation and access to the Court. We did not represent Blue Owl. Two days later, Kelley, Drye & Warren filed a notice of appearance on behalf of Blue Owl. We did not bill any time to Blue Owl, never appeared in the court. We are conflict-free and we are able to proceed.

If Mr. Shore has an issue, I know he'll raise it. We're going to have our application on file immediately. And hopefully, we can get these cases to the right resolution quickly, so that all of these disputes that I'm going to walk through can go away.

Next slide, Your Honor. Just a couple of points that were raised at the last moment when the disclosure

statement was sought to be adjourned on February 6th. I think all of these have resolved themselves. There was a lot of talk, as Your Honor knows, about the investigations. And you know, the reality is these investigations now are limited to literally a handful of people that are management at the company that the first lien lenders would like to continue at the company.

Mr. Stamer, on behalf of Mr. Wartell, is conducting an investigation. To the extent he determines there are claims, just like all of those other causes of action and claims, they will be carved out of the relief. So it's really a red herring when we talk about investigations that are ongoing. It is minimal. And Mr. Stamer and Mr. Wartell will make the results of those investigations clear by the plan supplement.

Next, Your Honor, I had mentioned, you know, we took a look at the schedule. And we've had the benefit or the burden of being across from Mr. Lauria and Mr. Shore many, many times. We know that they've already talked about discovery and the search terms that were used by conflicted counsel. And we looked at the schedule and we know the first lien lenders want to move forward because the burn in this case is so severe, but we said it wasn't realistic.

And so we worked with the first lien lenders -- we appreciate their consent to this -- and we kicked out the

confirmation hearing by approximately 30 days. And that, we believe -- and Mr. McKane will speak to this -- will give us sufficient time to deal with the issues at hand, produce the appropriate discovery, and be able to proceed where everyone's due process is afforded.

Next, Your Honor, put this slide up. You know, obviously, the goal is a global settlement. But I wanted Your Honor to be aware of all the various pieces that are floating out there that are open: The four appeals, the valuation, this 2L adequate protection motion, the continued fee burn, right? The litigation trusts. What are HoldCo claims? What are OpCo claims? How do we define standing? How do we define standing? How do we define sharing? There's lots of different issues.

But the reality is, when you look at the middle of the slide, global settlement, this is about one thing and one thing only: Are the 1L lenders and 2L lenders able to reach common ground on a transfer of value on account of the 2L claim. The 1L lenders believe they're out of the money. The 2L lenders are going to come up with arguments that say they're not. Our job is to try to bring those parties to the middle and, if we can't, proceed head on to get this company reorganized because that, again, is priority A through Z.

Before I turn it over to Ms. Greenblatt to give a bit of a summary on the status of the disclosure statement

and plan, I just want to hit this next slide. That, right there, Your Honor, is the turnover provision in the intercreditor agreement. That says, unless and until the first lien lenders are paid in full, every single dollar that the second lien lenders get gets turned over to the 1L. Pretty standard in an intercreditor agreement.

Now what these 2Ls and HoldCo lenders -- because I actually believe they're hopelessly convicted and I'll explain why -- what they're going to argue, in one instance is we who architected Irradiant, we architected the take-private transaction, we put money into the HoldCo, and the HoldCo, maybe even the OpCo, was rendered insolvent as a result of the take-private transaction. Okay. We're going to pursue fraudulent conveyance claims, we have direct claims, whatever that may be, they're in trust, Mr. Shore can have at it.

But at the same time, they filed a motion asking for adequate protection for the diminution in value of their claim from the petition date. And Mr. Augustine is going to testify, I spoke to him this weekend. Mr. Augustine is going to testify that, based on the company's numbers, they were in the money on the petition date, he's going to say that. And he's going to say that because he's looking at a business plan that the company prepared in June of 2024. This company filed early November of 2024. That June business plan was

used to solicit investment in the company, to which Irradiant and PIMCO said we're not willing to invest.

But they're going to use that business plan to try to justify that they were in the money on the petition date. And then they're going to come in -- and this is why they want the adequate protection first and the valuation second, they should together. They want to come in and argue valuation. Mr. Shore said we're going to have a huge valuation fight, battle of the experts.

And I'll tell you, Your Honor, I've been doing this for twenty-two years, I've never really understood the valuation. I've watched the trials as a young lawyer. Three people stand up and they all pick a number.

I can pick Mr. Augustine's number. Do you know what it's going to be? A dollar more than the first lien debt. And then my answer to him is Mr. Augustine, look what you've won, guess what you need to do, you now need to reinstate a billion-one of secured debt. And Your Honor is going to decide what the interest rate is. Well, it's a company today that's trading at 50 cents that can't afford the debt. And you have to attach an interest rate to that that takes into account the risk that it won't be repaid. And then, on top of that, Irradiant and PIMCO, guess what you need to do, you need to provide new capital to finance the business. It doesn't work, it makes no sense. But if we

need to have that valuation fight, we will have it.

But our whole point here is that this is getting all lost and people are throwing mud against the wall. And at the end of the day, it's our job to get the first lien lenders and the second lien lenders together. And if we can't accomplish that, we don't need a mediator. We'll be the mediator. If we can't get that done, we're going to have to proceed.

And the reason we're here today is it's our judgment that this business is on the rails. And if it keeps moving at this pace, with litigation and distraction, we're all going to lose sight of what we're supposed to do in life: Maximize value, keep jobs, and keeps businesses operational.

Unless you have any questions for me, Ms. Greenblatt is going to take the next piece.

THE COURT: No, I have no questions. Thank you.

MS. GREENBLATT: Good morning, Your Honor. Nicole Greenblatt, proposed counsel for the debtors. I promise I will not be even remotely as funny or charming as Mr. Sussberg.

(Laughter)

MS. GREENBLATT: But we did think it was appropriate, at the status conference phase, to just level-set and take a little bit of stock as to what the story is as we sit here today, which I think requires looking a little

bit backwards, not just forward to the hopeful settlement of the cases, but where we sit today, in terms of a plan and disclosure statement that's in front of Your Honor and whether we should be proceeding, in terms of moving forward with the disclosure statement.

We looked back on the history of the debtors pre-petition. And look, this is a long story, where you have investors who have been heavily involved for a long period of time, who were involved in many of the transactions that are being questioned, in terms of claims, but who also were involved in a many-months discussion around ongoing restructuring and alternatives to what is the proposed plan and the equitization plan. And we don't want that to be lost, that many months have gone where people have been engaged in those types of discussions.

As we look forward into kind of the post-petition period of time, again, we know what's ensued is a litigation morass, and we're concerned about what the impact of that is on the business. But we agree that what's important is that you turn over every stone, right? If there's out-of-the-money creditors, no matter how far out of the money you are, you turn every stone, but you don't do it at the expense of the operating business.

And it occurs to us that a lot has happened in this case where adult professionals have looked at this and

made an effort to do that. And I know there's been many iterations of a plan and Your Honor has had a lot of distractions with other litigation matters, but a lot of work has been done to get to where we are today on February 19th.

Josh also mentioned that the schedule that we're looking forward to is also adding -- you know, this reflects kind of a back-to-back against the DIP milestones, but we're looking at an incremental 48 days in the case to deal with any of the litigation issues that might move forward.

And so, Your Honor, I think what's also important is that we take stock of the plan.

So if we can move to the next slide.

We really tried to illustrate here what we're talking about because there's a lot of noise around how complicated it is, how many issues there are. And this story we don't think is that complicated. Yes, there's a HoldCo and OpCo structure, again, not that uncommon. We look at this case, as it sits today, there's a DIP claim, there's HoldCo debt, there's OpCo debt. And then we look at where we're going from here.

And again, we've highlighted on this page all the infrastructure that's already in place, in terms of the setup of HoldCo having its own independent director -- directors, with a special committee designated; OpCo having now completed a committee settlement, which I'll come back to.

But -- so when we look at the plan, what we're really moving to is the column on the right, which is the pro forma capital structure. And this plan basically simplifies the capital structure from about 2 billion in debt to a net debt of around 600 million. You're going to have a replacement ABL, which is a necessary component for a retail business. You're going to have net debt of around 600 million, so we think that's rougher -- roughly four fifty. You're going to equitize all of the other debt that's out there. And there's a warrant package on the table for some of the out-of-the-money stakeholders.

At the same time, the plan preserves any and all of the estate assets that may exist in the form of litigation claims related to any wrongdoing by anyone. So, when we go back and look at that pre-petition time line or post-petition time line, the take-private, the Conn claims, the B. Riley issues, missteps in the pre-bankruptcy liability management transactions, whether there were overpayments to some of the lenders as consent fees, missteps in the Chapter 11 with the appeals, was the DIP appropriate, was the roll-up appropriate, were the payments to critical vendors appropriate, no one is forfeiting or foreclosing litigation on any of those issues.

What we're trying to do -- again, back to the plan picture -- is move from this pre-petition debt stack to this

post-petition debt stack. And the issues around litigation really come second to reorganizing the business.

We also know, Your Honor, that the plan is better than any current alternative because, when we look at the time lines, again, there was a market check. It fell short, nobody showed up. There was -- we have evidence of what a forced liquidation looks like. That exhibit, I think it's Exhibit B, included in this morning's filing at Docket 1009 of the disclosure statement, shows that, in a liquidation scenario, the DIP is severely impaired and there's nothing beyond that. Alternatively, we have a plan on file that will actually get value to people and, most importantly, preserve the operations and the 12,000 jobs at stake.

Your Honor, I appreciate that we left a heavy markup on your plate over the past couple of days, and we wanted to talk a little bit about what changes we made to the plan:

We worked closely with the committee as a statutory body in this case.

We consolidated Class 6 for voting and distribution purposes.

We laid out more explicitly the claims and causes of action that are being transferred to the OpCo litigation trust.

We clarified the resolution for procedures of

disputed claims.

We worked with Mr. Wartell and his independent counsel at Akin to clarify the scope of his investigation, which, again, at this point, is pretty limited.

And we also worked very closely with the U.S. Trustee to work out issues with his objection to confirmation and agreed to opt-in provisions for third-party releases.

We've dealt with administrative claims and built out provisions for the allowance of those claims and added a condition precedent to the effective date that the admin claims need to be acceptable to the 1L lenders, which was responsive to the 2Ls' -- to the -- sorry -- to the Freedom Lenders' motion for adequate protection.

And we also worked with White & Case and asked them for -- we solicited and have incorporated most of the comments we received from them to date. We understand they're still working on their inserts. But again, we had five days, we got a lot done. We figured they could get us their comments in the same time period.

And lastly, Your Honor, the time line, we pushed the time line. And if we go back to the post-petition time line, that's just what I wanted to highlight, is that we are adding those incremental 48 days to be able to fully and fairly resolve any issues that relate to open matters.

And of course, Your Honor, we recognize that there

are still matters that will need to be resolved between the disclosure statement and plan confirmation, but that, too, is not an unusual story. And we think those issues are really pretty narrow:

You have scope of the releases and, again, the completion of the investigations and what's going to be published around that.

You have pegging the valuation of this business and how we allocate that value among the secured lenders in this case. That includes dealing with this adequate protection issue on diminution of value. They're just different variations of a valuation fight.

And then you have control over and prosecution of the claims and causes of action that are outside of the business enterprise and a sharing mechanism that has to be developed among the HoldCo and OpCo trusts.

We think the best way to do that is to put some discipline on this, and that includes a time line and a timetable, reduce the cash burn, and keep everyone focused on preserving the very real value in the business and maximizing the distributable value available from continued operations, uninterrupted by the prolonged litigation in these cases; at the same time, preserve all the claims that can all be dealt with later. There is no need to resolve all of these issues before you move forward with the disclosure statement.

So we're ready to move forward and we believe it's indisputably in the best interests of these estates to do so. I will put up the status of the disclosure statement objections we have, so you have a sense of you're willing to entertain going forward kind of the limited issues we'd be dealing with.

I would just flag that I think, you know, the biggest open issue, obviously, is the Freedom Lenders' objections, and their story, Your Honor, is mostly taint that there was conflicted counsel who drafted the documents before, no other counsel could possibly step into these shoes and put a plan on file for these debtors. We disagree that that story really syncs with the facts here. Their real issues center on three things: Joint plans are inappropriate, Inter-debtor conflict issues and identifying claims and causes of action, and the confirmation time line.

And again, I would just go back to the idea that we don't think a joint plan is inappropriate. The goal of these Chapter 11 cases is to resolve all of the debt, and so we are looking at this as one corporate organization. There's, again, already significant infrastructure in place to resolve and address potential conflicts of interest, which, again, haven't been identified, you know, in a way that we think is preclusive of moving forward with the disclosure statement.

White & Case would take it further, I think, and argue that the HoldCo debtors need separate counsel. We also don't think that's appropriate. There's ample precedent for representing HoldCo and OpCo debtors in these cases. And again, the infrastructure put in place is appropriate in all circumstances. I think what would be inappropriate is allowing counsel for -- you know, for a group of lenders who is at both entities to decide and dictate the outcome of plans for these entities.

So, Your Honor, I think, as to status, I just wanted to also flag that the Freedom Lenders had a number of other things listed in their most recent filing on adjourning the disclosure statement. And again, we think these have all been addressed in the updated plan and disclosure statement:

Lack of valuation, we've made clear it's going to be provided in the plan supplement, that is standard and we're building a schedule to deal with valuation issues. I would also just flag that the Freedom Lenders, obviously, have had access to all of the information in the debtors' data room, dating back pre-petition and post-petition, and have had opportunities to invest in this business, to which they have turned down.

The lack of clarity on potential deficiency claims, again, a subset of valuation issues, and we don't see it as a real voting prohibition.

Failure to file or commit to file independent reports, again, there are very real, you know, privilege issues in connection with doing these investigations. But we've spoken with counsel for Mr. Wartell, we understand he's perfectly happy to release the conclusions from his report ahead of the voting deadline. We've incorporated that into the plan and disclosure statement, so we think that should be off the table.

The description of claims and causes of action updated -- have all been updated in detail in the disclosure statement. Again, this notion that the debtors are retaining causes of action and forfeiting them, again, just isn't relevant given the formation of the HoldCo and OpCo trusts.

And finally, disclosure related to the 2Ls' adequate protection claims, again, we updated the disclosure statement to reflect that they filed a motion. If they would like to put more of an advocacy piece into the disclosure statement, we're happy to let that go forward, as well.

And with that, Your Honor, we believe it's appropriate and in the best interests of these debtors to proceed with the hearing for today, including approval of the disclosure statement.

THE COURT: Thank you.

MS. GREENBLATT: Thank you.

(Participants confer)

MR. SHORE: Good morning, Your Honor. Chris Shore from White & Case.

I don't want to jump ahead to the motion to adjourn or the disclosure statement or the scheduling, but I do want to respond to what was said, and that was a lot that was just said.

With respect to the vendors being nervous and this being a retail case and everything else, first, there's no evidence of that.

But second, this case isn't a normal case. A hundred million dollars was paid out to the vendors in exchange for post-petition terms in a plan that the debtors now disclosed, as of Monday, is a one-cent recovery for unsecured creditors. So the notion that vendors, who have received 100 cents on the dollar in exchange for post-petition terms, are protesting the 99 percent increase that they got because they were all treated as critical vendors is a bid odd.

But more importantly, the notion that liquidity is running short, again, no evidence of that. And if Mr. Orlofsky were here today, he would answer the question how are you on plan right now, and he's going to say we're ahead of plan, we're ahead of budget right now. So people can come in and say this is a retail case and everything is fizzling out. But if people were here to put on evidence about that,

that's not the case.

The cost of the reorg. Look, from our perspective, you know, it doesn't -- if people understand a case, we can all get in a room and say you know how this case is going to be go, we're going to go from A to B to C to D to -- we're all going to end up at E. That the debtors, whoever was running the show, fought from A to B and B to C and C to D and D to E, and ran up those bills, that's their choice. But we are kind of at E right now, which is where we all could have been at the first day of the case, if people had just taken a rational approach to the reorganization.

Our motion, we'll come to that when we talk about scheduling. I -- Mr. Sussberg has it all wrong about what that's going to go on. But I'm going to put on the record right now he did not, as far as I know, have anyone's consent to talk to my testifying witness without counsel present. I don't know how he thought he could do that. I reserve all rights with respect to that. But that's not appropriate.

The -- with respect to the conflict, I assume we're going to get disclosures from them with respect to screening. I don't have any interest or dog in that hunt, if they screened it right. We know from the Maxus decision in the Third Circuit that's not a problem, but they better have those screens up, and they should have been up before they ever started work.

Where I see today going, unless other people want to talk on status, we have a motion to adjourn. The debtors have consented to have it expedited. If Your Honor is going to expedite it, Mr. Zatz will handle that again.

If we have the disclosure statement hearing, Mr. Zatz will handle that.

And then, with respect to scheduling, if we could come back to that at the end, 30 days of an adjournment is not enough, and I'll explain the reasons and give you our view as to what it's going to take to get to a confirmation hearing, in light of where we sit today.

THE COURT: Okay. Thank you.

MR. SHORE: Thank you, Your Honor.

THE COURT: Anyone else?

(No verbal response)

THE COURT: Okay. I'll hear the motion to adjourn, Mr. Zatz.

MR. ZATZ: Good morning, Your Honor. Andrew Zatz from White & Case for the Ad Hoc Group of Freedom Lenders.

We filed our renewed motion to adjourn at Docket Number 993. I think in the spirit of continuing the status conference a bit and segueing to our motion to adjourn, it would be useful to talk about this last week, because a lot has transpired. It started from a week ago today when Your Honor gave her bench ruling on the Willkie retention

application, which, suffice to say, was a major turning point in these cases and as we explained to the debtors at the time, we felt was a time to reflect and take a step back and potentially reset. Keeping in mind that the debtors key witness, Mr. Orlofsky, at that hearing for Willkie retention application had testified that if Willkie was not retained, it would necessitate delay and something of a reset, and so the day after the bench ruling was handed down, we sent the letter to Young Conaway explaining our position on the case and it was not about reasonable diligence, independent advice and engagement.

The three points that we flagged were, one, that as the bench ruling said, there were aspects of the plan that Willkie had the sole pen on that related to their conflicts of interest; namely, claims against Brian Kahn and his affiliates and the trust that had been set up to deal with those claims, and that because of that, there was a need to not plow ahead with the disclosure statement hearing, but, rather, take a step back and reassess. The second point he made was related to the OpCo Holdco conflicts and how they needed to be addressed and how the Holdco debtors need a real fiduciary advocating for them, rather than, simply, an academic analysis of claims that may sit there. And then, third, was on the confirmation timeline. So, those are the three issues we flagged. We really haven't gotten engagement

on any.

Then, the next day, now -- we're on Friday, February 14th; this is the day that Kirkland was hired -- apparently, we came to learn early yesterday morning when a revised disclosure statement was filed, Mr. Wartell's powers were expanded. We concluded briefing on the pending appeals and the debtors filed an agenda saying that today's hearing was going forward.

Later that day, Kirkland sent us the existing disclosure statement, the one that Willkie had drafted, soliciting comments from us. Early on yesterday morning, we sent suggested comments and then about two hours later, they filed a totally new amended plan and disclosure statement, making many new changes that we had not yet seen. And then yesterday evening, said, Now, here are our attempts at making your changes to this new plan and disclosure statement that you just spent the day trying to digest. Do these work for you? And we communicated that in light of preparing and traveling to this hearing, combined with trying to understand what they had just filed and then making sense of their responses to our comments, it was not going to be possible to synthesize all of that for today's hearing.

So, here we are and the debtors are forging ahead, seeking approval of the disclosure statement. In our view, this is a mistake and consideration of the disclosure

statement should be adjourned for six reasons. First, it is premature and does not fix the Willkie problems. Two, the recent changes have not given the parties enough time to digest and react. Third, it's not necessary to maintain the confirmation timeline. Fourth, they still have no commitment to provide a valuation analysis. Fifth, they still have no real commitment to provide the investigation reports. And sixth, is a lack of the description of the claims.

So, let me start with how determination of the disclosure statement motion is premature and that still what they have filed does not address the Willkie issues. Again, one of the main points of the bench decision was that Willkie was conflicted because they had the exclusive pen on the plan that dealt with issues where they had other representations, prior and current.

Now, I heard Mr. Sussberg say, Well, that's all basically solved because all claims are going to the trust, but that's not true; not all claims are going to the trust. Certain specified claims are going into the trust; other claims are being released and we take issue with those releases.

THE COURT: But isn't that a confirmation issue?

MR. ZATZ: It's a confirmation issue, but my point is that the issues with the plan that relate to the same problems that arose in connection with the Willkie retention

had not been solved. There's a lot of red ink on what was filed early yesterday morning on the fifth amended plan and fifth amended disclosure statement, but none of it tackles the claims against Brian Kahn, his affiliates, and the trust; that all is exactly as it was.

THE COURT: Well, if you want to have some comment on it, draft it. I mean, Willkie drafted what they drafted. Kirkland has reviewed it. They've decided to move forward.

What do you want me to do, order them to change it?

MR. ZATZ: I think what we would like is an adjournment of the hearing so we can have the time to sit down and try to address these issues in a real way without forging ahead on a plan that is still tainted by these conflicts.

THE COURT: Well, just because Willkie is disqualified doesn't mean -- well, read Zenith. Read Judge Walrath's decision in Zenith and then you'll understand the difference between disqualifying a firm and what they can do, okay.

MR. ZATZ: Okay.

THE COURT: It doesn't mean that everything they did has to be redone if it doesn't need to be redone.

MR. ZATZ: Understood.

And to your point, Your Honor, I think there are

some real confirmation issues here, but let me, then, move to the second point, which are major changes that came late in the game. So, again, our view is that there's a lot of red ink on this fifth amended plan and disclosure statement, when you compare it to the prior version. I think, really, when it comes to the plan, there are two major changes that are worth flagging. One is that they have flipped the opt-out mechanic and the releases to an opt-in. The other is the consolidation of the general unsecured classes into what is now Class 6.

THE COURT: Uh-huh.

MR. ZATZ: And there's a very meaningful change when you look at the summary of potential recoveries or projected recoveries. In the prior version of the plan, the general unsecured claims against the OpCo debtors were all split out. When you added them all up, they came out to about $64.5 million. Now, they're all in one class together and the number has turned into $1.14 billion. There's no explanation as to why this massive increase has resulted from consolidating the classes.

Maybe it ties to a view of value and yet the debtors continue to say that no valuation analysis is required and will be provided, but that seems like a major change to us. But, at the same time, there's many other smaller changes in the disclosure statement that we're still

trying to digest and match up with their prior comments and their reactions to them.

And, you know, their claims that we've had ample time are simply untrue. They gave us a prior version of the disclosure statement to markup, only to blindside us, you know, yesterday morning with a new plan and disclosure statement that we had no preview of. You know, there's a reason why disclosure statement hearings are on 35 days' notice, and yes, it is typical for there to be last-minute changes and blacklines filed on the eve of the hearing, but that's usually as part of a consensual resolution. It's not an offering to try to make the objectors happy that may or may not work. And in this case, it does not work. The changes they made are not the comments we provided. They're responsive to them, but they are not the comments that we sent over.

Our third point is that it's not necessary to maintain the timeline. They're asking for a confirmation hearing on April 29th. I think I saw April 30th on their presentation, but they're saying 30-day kick. So, why is it necessary to proceed today? We have a 30-day window where we could take a step back and engage and try to fix these problems.

THE COURT: Well, don't we need to start now so that there's -- and it doesn't mean you can't continue to

talk -- but if we wait 30 days to fix problems and then we're at the disclosure statement hearing, don't your clients know how they're going to vote? Who are you arguing for, in terms of the need for further disclosure?

MR. ZATZ: I'm arguing for our clients, and so let me address the issue of the fact that we intend -- that we are not supportive of the plan because it is relevant to why we are here today and why we are objecting. First of all, we've been on the record, clearly, you know, in our capacity as Holdco lenders, we are very much not supportive of this plan and intend to reject it; as a result, our view is that the Holdco debtor plan is not confirmable.

We still have our second lien claims and the pending adequate protection motion. We have to see what happens with that and whether that side of the plan can get resolved. In the meantime, the 1125 inquiry has nothing to do with whether we support the plan or not; it's about adequate disclosure. And if we are going to wind up at a point that Mr. Sussberg fears we could wind up at if the settlement discussions don't materialize in the way that we all hope they will, then we need to know what we are, in fact, objecting to and some of the disclosure deficiencies, which I can get to if we're going to move to the motion itself, go to the debtors hiding the ball and not disclosing things that we need to know to know what we're shooting at

here.

THE COURT: Okay. Well, I'll hear that if we get to that, but that, to me, is what today is about. It's about what disclosure needs to be made --

MR. ZATZ: Yes.

THE COURT: -- so that you can make an informed decision, your clients can make an informed decision.

MR. ZATZ: Yes, I agree, Your Honor.

And so, let me move to the fourth point, which is the lack of valuation analysis. This is, you know, this was the debtors' stance when Willkie was their proposed counsel. It apparently is their continued stance, which is they're being -- they're certainly being clear they are not going to submit a valuation analysis with this disclosure statement. Our view is that under the language of Section 1125(b), that is not permitted.

Section 1125(b) says that a Court may approve a disclosure statement without a valuation analysis. That's what the debtors hang their hat on. But they're trying to twist the context of the word "may" where it's not that the Court may approve a disclosure statement without one, but rather, the debtors have the choice. But that's not what Section 1125(b) is about. And when you look at the legislative history of it and some of the cases that have interpreted it, which we have cited to in our disclosure

statement objection, it is clear that it's the Court's determination on a case-by-case basis whether a valuation analysis is required.

So the debtors cite, in response, to certain orders that don't exactly engage on the 1125(b) analysis, but rather, simply say that under those circumstances, a valuation analysis is not required for the disclosure statement to be approved, but those were very different circumstances that we have here, where valuation is very much at issue: first, because of our pending adequate protection motion; second, because there are deficiency claims that are sharing in the pool of recovery for general unsecured creditors; and, third, because there are going to be confirmation issues related to the value of this company and whether the absolute priority rule is being adhered to. So, value is very much at issue here and a valuation analysis should be required in order for this plan to be solicited and the disclosure statement to be approved.

Next, is the pending investigations. Because, as I think Your Honor is aware, there have been two ongoing investigations in these cases for which the estates have paid substantially so far, and at least in the case of Mr. Wartell, will continue to. One is the Petrillo's investigation, which is their second investigation into claims and causes of action that the debtors, collectively,

OpCo or Holdco, may have against third parties. And the plan for that is the same as it was the last time we were here, which is that that investigation is going to get handed to the committee behind closed doors and will be the end of Petrillo's involvement in these cases. Our view is that whatever Petrillo's findings are and whatever causes of action they've identified should be publicized.

Now, let me go to -- I don't know, Your Honor, if you've had a chance to digest what the debtors filed this morning, but, again, they filed change pages in an attempt to address the comments that we had sent over. There's a part of their Q and A, their new Q and A section is, effectively, you know, what are the things we asked for that they said no to, which is not exactly the kind of disclosure we wanted. We asked for certain disclosure and they said they -- and their disclosure is they asked for disclosures and we said no, okay.

Well, one of -- you know, we offered as something of an attempt at a compromise that the Petrillo report would have to be publicized 60 days in advance of the confirmation hearing, as opposed to our prior position, which we think is the right position, which is that should be publicized before the disclosure statement is approved at all. But there's still no commitment to disclose in any way the findings of that report. But our view is that there should be a

publicization of those findings in order for the disclosure statement to be launched, or at least a commitment to give parties ample time to digest them in advance of confirmation.

And the same goes for the Wartell investigation. Now, we're hearing, well, the Wartell findings will be in the plan supplement. Well, for one thing, perhaps it's a minor point, but it's shaving a week off the normal requirements that we're statutorily entitled to, but there's also no real commitment to provide a real kind of report here. It sounds like the kind of typical schedule that you'd see in a plan supplement of the retained causes of action that doesn't get into what was reviewed, what kind of analysis was done, how the conclusions were reached, et cetera. I think we need that kind of full investigative report to be made public in order to react and, again, know what we're shooting at here.

My last argument on why we feel today's disclosure statement should be adjourned is the description of claims and causes of action. Now, I hear the debtors saying today that's been addressed because there is a list of some of the things and causes of action in the plan and disclosure statement now, but that list is incomplete for two reasons. One is, it's only the OpCo claims that are described. We are, of course, extremely focused on the Holdco debtors' claims. As Mr. Shore was here telling you at the last hearing, that is really the sole source of recovery that we

have to look to at the Holdco debtors and, yet, there's no description of those claims at all.

And then you have another issue, which is some of, you know, these claims are described very broadly. It's things like, retained causes of action against Brian Kahn, but when you look at cases like Crystal Cadillac, which is what we're concerned with here and why we're raising the objection, those cases say, claims have to be described with specificity or you run the risk of effectively waiving them under the doctrine of judicial *estoppel*.

So our view is in order for the disclosure statement to really be doing its job here and preserving the claims that a huge part of this plan is meant to preserve, they need to be described with particularity. So, putting aside, Your Honor, confirmation objections of which we think there are some serious ones that will need to get addressed, I think there are real reasons to take a step back here, give the parties more time to engage. We're not talking about taking the full 30 days that the debtors have; perhaps, it could be done in a week or two, but this all feels premature and rushed, from our perspective, and unnecessary.

Now, just on the point of necessity, to wrap up, we're hearing that time is of the essence, and Mr. Shore addressed this, in part. As he said, there's no evidence in the record that vendors are skittish or that the company is

running out of money; in fact, the opposite is true. And so, you know, there is just no pressing need to be moving forward today. I understand that people want to show progress and want to have a good message to deliver, but we think it's more important for this to be done right.

So, with that, I will rest unless you have any questions, Your Honor.

THE COURT: I don't have any questions. Thank you.

MR. MCKANE: Good morning, Your Honor.

Mark McKane of Kirkland & Ellis, proposed counsel for the debtors. I'll be brief in responding to Mr. Zatz' arguments, because, in many ways, like some of Mr. Shore's music selections, they're kind of stuck in the past. They're stuck with where we were, not where we are.

(Laughter)

MR. MCKANE: As I understand it, as we went through the chronology, Mr. Zatz needs to talk to his partner, Mr. Lauria, about, like, whether there's been any engagement at all, because there's been engagement throughout Friday, Saturday, Sunday, Monday moving things forward. When we got the disclosure statement, as we had it, we didn't just send it to our friends at White & Case; we sent it to everyone and said, tell us what you want. Give it to us. Right.

We took them altogether, we compiled it, we made it our own. We sent it back out and took another turn with comments. That's what you do with a disclosure statement: you turn the document to address the disclosures that everyone needs and if you don't -- if we can't find common ground, put in your own -- we'll give you -- here's your spot, give us your letter, we'll address it. The Committee can do that. The Freedom Lenders can do that. Anyone can do that.

The notion that this is premature, Your Honor, this is not the first time that this company has tried to get this disclosure statement done and they've had more than enough time to address the issues that are in front of them. This Kahn issue, with regards to claims, it's all reserved for them.

I don't think they want us to write their complaint. I think what they're asking us to do is like, look, here it is, whatever you think there's value at the HoldCo level, you got it. So, too, with the OpCo, if you think the OpCo has claims, they're yours.

What the plan issue is about is, if there are any standalone claims that are being released at the HoldCo level, that's why Mr. Wartell and the Akin team are here to evaluate for those individuals, are we going to release those claims? And we said when they're done with their

investigation, they will identify these individuals are going to be released and we can adjudicate whether that's appropriate at confirmation. Really, these are confirmation issues.

Your Honor, on one through six, premature, I think we've addressed. Changes late in the game -- this issue with the consolidation of the claims at Class 6; that's the deficiency claims getting rolled in, as I understand it. So, the big leap is something that has come from multiple constituencies. Give us some sense of the size of the potential deficiency claims, so we did. We're not blindsiding anyone when we incorporate comments into a turn. We move the document forward.

As it relates to the 30 days, Your Honor, we, like you, think we need to move this case forward. We need to, like, get the disclosure statement out. It doesn't mean we're done talking. Absolutely not. You heard Mr. Sussberg earlier today: we want to have that meeting next week. We want to, it looks like, see if we can resolve these things before the full-on litigation machine hits high gear.

But as it relates to the timeline, I will say this, and I'll talk to Mr. Shore about it and I'll respond to what he has to say, as well, we put in the additional month because we wanted to be credible and realistic about what it may take. We haven't waited. When we came onboard, we

understood that the Willkie team had already been working up a production that was almost ready to go. We did the additional, like, e-discovery processing necessary to get that out and that went out last night.

So, we're moving the case forward in every way that we can. That doesn't mean that we're done. Don't get me wrong, I know it won't satisfy Mr. Shore and his team. We've engaged before and we'll engage again, you know, as we have in every case, to figure out what needs to be done for confirmation. If we're going to have a full-on valuation fight, okay, but I think Mr. Sussberg has properly identified how that works.

As to the valuation in the disclosure statement, we (indiscernible) there was a market check that was done and we detailed that process and that market check did not yield a clearing bid. So we're out there saying we tried to do what is typically viewed as the gold standard to see what the market will say. We put in minimum bids. Nobody cleared those bids. That's good evidence as to what we think the value is; nonetheless, we'll come back in a plan supplement and pen it down.

As it relates to the investigations, I'm somewhat at a loss. The investigation that you need to know is, whatever was potentially identified and, more importantly, whatever the UCC thinks may be potential claims at the OpCo

level, they're going to that litigation trust. Whatever value it is, it is.

Who are we to say what they think are the best claims? If we go further, we don't want to throw shade on a potential recovery. If those are viable claims, those are claims; they have them. The same is true with the Holdco trust, as well. The only thing that relates to an investigation on a go-forward, is, are there any that are going to be released and that's why we have the Akin team and Mr. Wartell.

And as it relates to interdebtor conflicts, I don't want this to be lost, we got onboard; we looked at what had been done; we looked at the resolutions and the delegation of authority down to Mr. Wartell; and we revised it. We made it a little bit broader to make it absolutely clear, if there are interdebtor conflicts as it relates to the transaction, Mr. Wartell has full delegation of that, as well, and that's true as of the 14th. So, before anybody said anything about interdebtor conflicts, we did our own work coming in new and figured out that was what was appropriate. So, that's where we are on investigations.

And then, you know, finally, the last half of what Mr. Zatz argued, it's not a motion to adjourn; it's what he thinks is appropriate in a disclosure statement. We don't agree with that. I know, you know, frankly, Mr. Hunter will

address it on the substance, but we're here today and we think it's appropriate now with new counsel, with a fresh look, doing exactly what Mr. Lauria said we should be doing, which is get up to speed, give independent advice, talk to your constituencies. We've done all of that, as Mr. Sussberg has said, now we need to move forward.

THE COURT: Okay. Thank you.

Okay. We're going to move forward today. I'm going to deny the motion to adjourn. I think what I heard is the substantive concerns really go to the adequacy of the disclosure statement itself, and I'll hear that, and the timeline, quite frankly. I think it all boils down to the timeline. So I'm going to overrule the objection -- I'm sorry -- the motion to adjourn and we're going to get going on the substance of the disclosure statement.

Mr. Fox?

MR. FOX: Good morning, Your Honor.

May I please the Court? Tim Fox, on behalf of the United States Trustee.

Just imposing on the Court for a scheduling issue, I have a status conference before Judge Shannon starting at 11 o'clock in Tupperware. I was just asking if I could be excused --

THE COURT: Certainly.

MR. FOX: -- momentarily to attend that and then

come back for the balance of the hearing?

THE COURT: You certainly can.

And anybody else who has something else they need to attend to, as long as you're not addressing me, you can do whatever you want.

(Laughter)

MR. FOX: Thank you, Your Honor.

THE COURT: Thank you.

MR. FOX: I will return.

THE COURT: Okay.

MR. HUNTER: Thank you, Your Honor.

For the record, Derek Hunter of Kirkland & Ellis, on behalf of the debtors.

So, I think we've talked a lot about the substance of the disclosure statement. To your point, I don't feel like my thunder was stolen at all --

(Laughter)

MR. HUNTER: -- but I think we can focus on the discussion here on a lot of the issues that were discussed. You know, Mr. McKane hit it, you know, the timeline was, we got involved, we reviewed it quickly, we sent the documents out to everybody. You know, to White & Case's credit, it was a quick timeline. They did get us comments as we were filing the first draft. We worked to try to incorporate their comments, to the extent we could. Of course, there were

provisions that were, we thought, substantive: file a report 60 days before the confirmation hearing, which we substantively were not willing to agree to, but we wanted to disclose that they asked for that and why we disagreed. And so, the disclosure statement was revised to add, we think, the disclosures that had been raised by the parties in the last few weeks and by the White & Case team and other taking around the table.

You know, first, as Ms. Greenblatt mentioned, we went from opt out to opt in; that creates a lot of red on the page, but, of course, I'm going to a U.S. Trustee issue as soon as Mr. Fox steps out, but he expressed his appreciation for that change and we understand it resolves his issue, but we'll check with him when he comes back. We streamlined the Class 6 construct in the plan and disclosure statement. We described the litigation claims, you know, with the help of the Pachulski team as to the OpCo trust, and if there are disclosures that the White & Case team wants to add with respect to the claims for the Holdco trust as they see it, they're free to do that.

You know, we tried to describe the claims in much more detail, how the trusts work. You know, in reading the transcripts from the prior hearings, it seemed like maybe there was a little confusion about how they worked together. There are two trusts -- that's slightly unusual -- they may

have similar, competing claims. You know, we disclosed that and that'll be an issue that we'll have to think through and the trusts will have to reconcile that. One trust is funded, pursuant to the UCC settlement; the other is not. We made that clear in plain English.

There was some confusion about how the investigation worked, *vis-a-vis*, the trusts, understandably. We tried to disclose that, again, in plain English in the disclosure statement. Everything is going in the trust except for a few specific things that Mr. Wartell is investigating. There was talk about intercompany conflicts: Holdco v OpCo. We expanded the delegation for Mr. Wartell and we explained that in the disclosure statement, again, we attempted to, in plain English, as best we could. Some current events: obviously, the Willkie disqualification hearing; Kirkland's engagement; and the lead-up to these cases and the engagement with the parties and kind of what's ensued from that point. And, you know, those were the disclosures that were made primarily in the disclosure statement filed at Docket 995.

Those did not incorporate the comments from the White & Case team, just because of the timing. We filed another one early this morning. I'm not sure if you've had a chance to review it, but I'm happy to hand it up.

THE COURT: I've reviewed it.

MR. HUNTER: And those were, you know, attempts to address the disclosure issues that the White & Case team flagged and, again, if they have an insert, if they have further language from their perspective that they want to add, we're all ears.

But we think, you know, with all the hearings that have already been had on this and the disclosures we've added, we think the disclosure statement certainly has adequate information, which, as you've already highlighted, is the standard for today. There are confirmation issues. There's a lot of information that the White & Case team has indicated they're going to want, you know, (indiscernible) objecting to the plan, valuation, and investigations, and support for releases.

We know our burden at confirmation, Your Honor. We'll have to show that the plan satisfies the absolute priority rule. Does it doesn't unfairly discriminate? If we're releasing claims, does it meet the appropriate standard? We're going to have to, you know, put our evidence up and we'll have to work with objecting parties so they have access to that information so that they can formulate their objection. But we think that's something that we can work through between now and confirmation because, as the White & Case team has told us clearly, they know -- they have what they need to vote on the plan. They're voting against it, as

they've told us, and so we think the disclosure statement should be approved and go forward today and we'll work through all those other issues between now and confirmation.

So, I think that's the punchline on the disclosure statement, from our perspective. I'm happy to walk through any questions you have on the changes or talk about the schedule. I know the confirmation date we proposed might not work for Your Honor, but, you know, I wanted to just start there and take it however you'd like, Your Honor.

THE COURT: I think the big, as I said, I think the big question is the timeline and to the extent that things are not, like the valuation and the investigation, the conclusion of the investigation, so the knowledge of the releases, until we have that, it's hard to -- well, until that's disclosed, you can't engage of those issues. So, I think not disclosing that now, while it may be okay in terms of getting the disclosure statement out, I think it creates the problem for the timeline. You push the timeline back.

MR. HUNTER: Yes, Your Honor.

THE COURT: So, as I'm looking here at the proposed timeline, we'll get into that because now I can't entertain confirmation on April 29th because of my current schedule, but, basically, you're proposing 30 days -- 33 days between plan supplement and confirmation hearing and 30 -- well, March 26th to April 2nd, so that's 4 -- 6 days between

plan supplement and objection deadline.

So, how does that work from a logistics standpoint? And I did notice and I appreciated that the time that the confirmation was pushed out. I saw that, and I assumed, which you have confirmed, that you took a look at it and said that doesn't work, so I appreciate that.

So I'm trying to understand why you believe this timeline does work.

MR. HUNTER: Yeah, Your Honor, I think with -- I mean, for example, and, look, these dates, we know we have to work with the parties on this and so if we have to move this stuff around, which may work -- we'll doing in real time, we can do that. You know, filing some of this information, you know, like the outcome of the Wartell investigation, if that's a plan supplement item, right, which I think that's how it's been described, and that's in advance of the confirmation hearing by, you know, 30 days or so, we would think that gives the parties enough time to react to it, you know, ask questions, serve discovery, et cetera, because there's time to, you know, then work out of the objection deadline. But if there needs to be more time, we should move it back a week so they have more time with it, you know, we need a schedule that works, of course.

THE COURT: Well, I'm looking. The objection deadline is six days after -- seven days after the plan

supplement deadline. So, you find -- you get the valuation. You get the results of the Wartell investigation, then you have to do our discovery, take your depositions, et cetera, and you want people to file objections by -- in seven days?

MR. HUNTER: Yeah, we can talk with the Akin team. I think, to your point, we have to balance when they can have conclusion ready, for example --

THE COURT: Yeah.

MR. HUNTER: -- versus when the parties can object. So it's probably a mix of, can you move that up, the report and the objection deadline back a little bit to make that work.

Your Honor, would you like us to take a few minutes and try to --

THE COURT: Well, I -- we will do this, but I'm just previewing, because I really do see that that is more the issue. I want to hear the disclosure, actual objections, but I want y'all to think about this, the logistics here, which I know that you have thought about, but I want you to continue to think about.

So, let me from Mr. Shore or Mr. Zatz, whoever's going to do the disclosure statement objections.

MR. ZATZ: Yes, thank you, Your Honor.

Andrew Zatz, again, from White & Case, on behalf of the Freedom Lenders. Mr. Shore and I are going to tag

team here. I want to hit on patent unconfirmability quickly, get into the disclosure deficiencies, then I'm going to pass to Mr. Shore to talk about the scheduling, which I know is very important to Your Honor.

Patent unconfirmability. I know you had said you want to hear about disclosure deficiencies. I'm not going to harp on the point, but I do want to note in response to some of the comments the debtors made in their status conference update. They're very focused on reorganization. I think Mr. Sussberg said the word about 20 times in his opening statement. Priority A to Z is reorganization, talking about one corporate reorganization.

Our point is there is no reorganization prospect for the Holdco debtors without our support. That's been the case since day one. We've been banging that drum. We filed a motion seeking to have the stay lifted, our exclusivity terminated to give us control there, which was denied and we're appealing it. We have serious concerns here.

Administrative expenses are being accrued and people are looking at the Holdco debtors. There's some sort of allocation under the DIP order that could put some of those allocations on the Holdco debtors. They'd be getting no benefit from these cases and there's no safe landing in sight. This is a road to nowhere, currently.

We continue to believe that the plan is patently

unconfirmable as to the Holdco debtors and the debtors are saying in their disclosure statement they're going to make their case at confirmation. That's their right, but we would like to put the Court and everyone else on notice that we don't see this ending well. There are new risk factors that speak to the conversion of the Holdco debtors. That is a real risk and if that is where this is headed, we should have a conversation about getting it over with because there is not progress being made on that front.

THE COURT: Well, that's like the one motion y'all haven't brought, right?

(Laughter)

MR. ZATZ: To convert it, yeah. But we're reserving rights on that, Your Honor.

THE COURT: Uh-huh.

(Laughter)

MR. ZATZ: Let me get into the disclosure deficiencies. Really, there are three categories of disclosure issues that we've identified. There are the misrepresentations, the things that have carried over from prior versions of the plan that did not make sense and continue to not make sense. And there are new things in what was filed yesterday morning that do not make sense.

On misrepresentations, let me first just address two that were made at this hearing. I don't want to let them

go unaddressed. One was that Irradiant was an architect of the take-private. That is not true. They participated in, in financing it. They were not the architect of it.

And the second is that there were opportunities to invest that our clients did not avail themselves of. That is also untrue. There were numerous proposals made to invest, prepetition, on various terms. They didn't materialize, but those conversations were had.

In any event, let's get to the misrepresentations in the actual disclosure statement. One is about how the Holdco lenders, quote, tightened the grip on the company, prepetition, related to amendments that were, in fact, about providing the company with flexibility and liquidity, not tightening the grip on the company.

Another is about conversations that were had with Mr. Lauria the weekend after Kirkland was selected as replacement counsel about setting up a meeting, that we refused. This is not a true version of events. There is a request for a call that we said did not make sense, and so, you know, with our clients on and that call didn't happen. But there was no, you know, idea of having, like, some sort of settlement meeting that we refused, and, in fact, as Mr. Sussberg said earlier, we're trying to make one happen, I suppose, in a week or so.

THE COURT: Okay. So, do you want to add your own

language or do you want them to take that out?

MR. SUSSBERG: We'll just delete it.

THE COURT: Just take it out.

MR. SUSSBERG: We'll take it out. That's no problem.

THE COURT: Okay.

MR. ZATZ: That's fine.

There's another part of the disclosure where they talked about our position on refusing to vote for the plan. It talks about why we are doing so in our 2L capacity; again, that has not been our position. Our position on voting against the plan in our Holdco capacity -- are issue, really, again --

MR. SUSSBERG: We'll delete it. No problem.

THE COURT: Yep.

MR. ZATZ: And then, last, on this -- on the back-and-forth around marking of the disclosure statement and how the disclosure statement reads, as though we were presented with the filed version of the disclosure statement to markup, when we were, in fact, given the prior one. And I suspect that --

MR. SUSSBERG: We'll delete that, too.

MR. ZATZ: All right. So let's get to the parts about the things in the disclosure that don't make sense, and this relates to what disclosure statements are really about,

which is informing voters of what the plan is doing so they can make an informed decision. Because it -- and it does tie, perhaps, to confirmation issues, but it is worth highlighting things where the plan is simply inconsistent or does not work or make sense that could be clarified now or fixed now and should be.

So, one is this notion that permeates, still, the plan and the disclosure statement, about how there will be, quote, retained causes of action that will vest in the reorganized debtors. We're missing where that's possible. It seems to us that every claim or cause of action is either being released or going into a trust and that seems to be the continued story and, yet, there's lots of language in the plan and disclosure statement about the reorganized debtors retaining causes of action. That does not --

THE COURT: Can you point me to where that is?

MR. ZATZ: It's going to require a little bit of page-flipping, Your Honor, but I will find it for you.

THE COURT: Okay.

(Pause)

MR. ZATZ: So, I'm looking at the blackline that was filed early yesterday morning.

Okay. So here's one example. This comes up in a number of places, but I'm on page 21 of the blackline they filed. It's at Docket 998-2. It's part of their new Q and A

section. The question posed is in Section J:

"The does plan preserve causes of action?"

And in the second paragraph it says -- I'm going to skip some words here, but in accordance with Section 1123(b) of the Bankruptcy Code, the reorganized debtors, the OpCo litigation trust and the Holdco litigation trust, as applicable, may retain -- shall retain and may enforce rights to pursue causes of action, including actions specifically enumerated in the schedule of retained causes of action, claims going in the OpCo litigation trust and claims going in the Holdco litigation trust.

So, within that sentence, again, one of a number of examples, there's a notion that there'll be a schedule for retained causes of action which will be vested in the reorganized debtors, which, again, does not seem to fit the framework that the plan is putting out there.

MR. SUSSBERG: Rather than run down a rabbit hole --

THE COURT: Yeah.

MR. SUSSBERG: -- let me address this real briefly.

THE COURT: Uh-huh.

MR. SUSSBERG: So, when Mr. Zatz talked before, he was kind of conflating the causes of action that were going to the trust, which, surely, they don't want us to

necessarily describe and draft their complaint and any retained causes of action. Every single disclosure statement Your Honor has seen, it says if the estate is going to retain a cause of action, it will list it in the plan supplement.

Currently, right now, we're not sure. We don't believe there are any retained causes of action, but if there are, we will describe it with sufficiency as part of the plan supplement like we always do. But the idea here is that all of the claims, the Mr. Kahn claims, the B. Riley claims, the take-private claims, they're all going to the trust, and so those are preserved; there's no judicial *estoppel* issue whatsoever. They go to the trust and are preserved.

If there's some action that relates to a vendor that's a go-forward partner to the company that we want to describe as a retained cause of action, we've always reserved the right for the last hundred years to put it in the plan supplement. That's all we're talking about. If we want to make that clearer in the document, just like everything else, tell us what you want to delete, tell us what you want to add. It's a disclosure statement. That's it.

THE COURT: Okay. But I think the question is -- and that's kind of where I assumed we'd go with some vendor cause of action, but the -- I'm not sure if the definitions do work that way. It sounds like every Holdco cause of action, which could include an action against a vendor, is

going to the Holdco trust. Every OpCo cause of action, which could be against a vendor, is going to the OpCo trust.

So is there is an operational exception or something like that to the where the causes of action are going, maybe that does need to be clarified.

MR. SUSSBERG: We will --

THE COURT: And maybe it's in there, but maybe it needs to be clarified.

MR. SUSSBERG: To the extent it's not in there, we will clarify that and then we'll supplement at the plan supplement time, if there are any of those claims.

THE COURT: Okay.

MR. SUSSBERG: No problem.

MR. ZATZ: Look, I'm going to assume, perhaps I'm being ambitious that Mr. Sussberg, he will work with us on these issues, but we need to have that conversation.

Let me finish the list of things that did not make sense and then I think it will be helpful if Mr. Sussberg is of the view that, in fact, these things cannot be worked through, because, then, I think we have real issues. Look, I think we have an issue about the trust structure, generally, and the potential overlap of claims. Now the debtors are identifying, I suppose as a risk factor or a point of disclosure, that there could be overlapping claims between the two trusts, which will have to get worked out, but will

not by the effective date.

And that's kind of the end of the story that they tell. There's no, seemingly, no mechanism to resolve it or no, you know, means of moving forward if it cannot be resolved, which seems to meaningfully undermine the idea of preserving the claims and causes of action, letting the trust move forward on preserving the value, then, for creditors.

So, in our -- I think there needs to be some disclosure around, you know, some sort of plan of action for dealing with this overlap issue. It also, again, going back to the description of claims, I mentioned this earlier, it's only the OpCo claims that are described and they're, in our view, not described with the level of specificity that is legally required.

There's a lot of language that does not make sense to us now about Mr. Wartell expanding his investigation; again, let me just take a step back here. We're the sole creditors at the Holdco debtors or I should say the Holdco lenders are and we are, our clients are 93 percent of the Holdco lenders. This is another in a line of decisions that the Holdco board has apparently made that we've had no consultation on or prior warning of, but Mr. Wartell's role has been expanded again.

And part of this expansion is he's going to investigate some new people that he wasn't authorized to

investigate before and one of them is the First Lien Lenders/ DIP lenders. And we have no reason to think that there are, necessarily, any viable claims against the First Lien Lenders, but at the same time, what is the point of this investigation, because there's a DIP order that basically, completely cleanses them and a challenge period that has passed for everyone, but the Committee, who has settled and is not going to pursue those claims. So, why is the estate paying Mr. Wartell to investigate claims that cannot be pursued? That seems like a question that should be answered here.

You also have the Holdco lenders' guaranty. The Holdco lenders have a $19.5 million guaranty from the OpCo debtors, completely unaddressed by the plan. So it would be helpful to get some explanation as to why that is. Again, I will add the issues about the valuation analysis and the ongoing investigations to the list. We've tackled those.

I think I hear the debtors saying they're at least going to disclose these things by the plan supplement deadline and then we have to figure out scheduling, so I think I'm probably getting into Mr. Shore's territory and I'll let him address it, but those are issues that are kind of on our list of things that we do not think make sense before and still do not.

And then, I would get to new issues that are

raised by the changes they made early yesterday morning that we think require additional explanation and clarification. The first, I mentioned it before, there has been a massive increase in the estimated amount of general unsecured claims, now that they've been consolidated in one class. Why? Why has the number gone up from 64.5 million to 1.14 billion?

This is, obviously, an issue for unsecured creditors at large. It's an issue for us, as well, because we're being told that our entire 2L claim is a deficiency claim and that we're now sharing with other general unsecured creditors. So, I think, at a minimum, it's necessary to inform the voting public on what this number represents, why consolidating the classes is expansive in this way.

Another thing that's changed, or, actually, before I move to the next point, kind of a related point on the increase of the number, is what exactly they're doing with this new Class 6; it's not clear to us. Are they treating all unsecured creditors, now, the same regardless of what debtor they have claims against or is this a matter of administrative convenience? I don't think that the changes from yesterday morning really make that clear. It certainly wasn't clear to me in reading it, what their intent is there in consolidating the class.

But I think that if the answer is they're effectively, substantively consolidating all of the general

unsecured creditors where it doesn't matter who you have a claim against, you're getting the same thing, that's a very significant confirmation issue that they're creating.

I do think, number 3 on the list of new things that don't make sense, there are now these new references, you know, to treatment, well, your treatment in this scenario is going to be whatever you're entitled to under 1129(a)(7) and 1129(b). And our view is that that's not sufficient disclosure to inform. This is for our treatment. This is on treatment of our 2L claims and, indirectly, our Holdco claims, because it relates to the claims that the Holdco debtors may have against the OpCo debtors.

In both cases, there's this language, you're going to get whatever 1129(a)(7) and 1129(b) requires. Well, what is that? Is it the debtors' position that under those two Code standards, we're entitled to nothing or it's just something that we're going to figure out later and when are we going to find out exactly what it is that that equates to. I think there needs to be disclosure around that, as well.

Number four, the restructuring support agreement. All right. We've heard a lot of talk about vendors and not spooking the vendors and how they're paying close attention. You know, one thing that would probably really reassure the vendors right now is if someone from the OpCo 1L group come out and said, The restructuring support agreement has been

amended. Our violations have been waived and it is still live and everyone is still onboard and rowing in the same direction. But in light of the Willkie retention decision and the extended timeline, there seems to be a lot of uncertainty, at least from our perspective, as to what the status of the RSA is.

And then last on my list of the new things that don't make sense is trying to make sense of the new, expanded role that Mr. Wartell has. I understand that he was more limited before in who he could investigate and now he can investigate more people, so that makes sense to me.

What doesn't make sense is now he has these broader-conflict matters rights. So, surely, because Mr. Wartell was appointed a couple of weeks into these cases, he did not approve the RSA, the DIP, the plan framework, the bid procedures, a lot of stuff that was wrapped up before the case was even filed. It's not clear to me whether he's approved these new amended, this plan and disclosure statement, or whether he was asked to or whether they've been designated as conflict matters, or what this is really even meant to cover.

There's a notion of a conflict, strategic transaction that he can pursue and what would that be, other than what the plan has provided? You know, we certainly welcome the idea of having a real, independent fiduciary, but

the dividing line here and given where we are in the cases, what that could possibly address is confusing to us and seems, frankly, a bit empty because we're still proceeding down a path that was all designed by the RSA before the cases were filed. So I think just more disclosure and explanation around what exactly, one, a strategic transaction could be, is it really on in the context of an alternative plan, you know, I think that kind of disclosure would be helpful.

So I think that is it for the disclosure deficiencies. I would like to hear a response from the debtors on whether they feel like those can be addressed, but I also want to give Mr. Shore the floor to tackle the schedule.

So, Your Honor, what order --

THE COURT: I'd like to do the disclosure statement issues first and then we'll get into the scheduling.

MR. ZATZ: Okay.

(Pause)

MR. SUSSBERG: Thank you, Your Honor.

For the record, Derek Hunter of Kirkland & Ellis, on behalf of the debtors.

So, yeah, just to take these in order and, you know, the 1L lenders and/or the Committee may have a few thoughts. First, on the patently unconfirmability, the fact

that they are not voting for the plan or say they're not doesn't mean the plan -- preordains that the plan is patently unconfirmable and that's why we send out solicitation and then we're going to spend that time trying to engage and reach a compromise. So, I don't think the law says if a creditor has decided that they're not voting, it automatically means it's unconfirmable, you know, and that's to be figured out as part of this process. But we're on notice of their intent and the added risk factors in the disclosure statement specific to their intent that they've indicated they don't want to vote and that creates risk and I think that's what's important for disclosure purposes.

We heard about what was described as misrepresentations. I think Mr. Sussberg addressed those. We will delete them or if they have language, we will take that language.

We talked about the retained causes of action and how we deal with that through the plan supplement.

On the trust structure, you know, there's this tension where if it's helpful to the argument, they say, you know, get out there and do stuff with my claims and the trust and stuff, if that's helpful for the argument, but also, you know, those should be reserved for creditors. You know, we don't want the debtors messing with those. You know, it's hard to square that circle sometimes.

What we have disclosed are there's two trusts. They're getting set up for different creditor constituents. Those creditor constituents have said, we can look out for ourselves. We don't want the debtor messing with our claims.

We can see how that could create issues, but, you know, if an entity owns a claim, it's going in the trust. And if there's a dispute about whether one of those trusts owns a claim or doesn't, you know, we can't solve for that at this point. And I don't think the creditors that are beneficiaries to that trust would want us to try to solve for it. The trusts will have to work it out amongst themselves if they're pursuing competing claims in the future.

THE COURT: Well, presumably, there could be two Plaintiffs who have claims.

MR. HUNTER: And it could be as simple as that, Your Honor, and everyone can recover.

And if there's issues, you know, the confirmation orders have typical language about retaining jurisdiction for those types of issues if we need to get in front of the Bankruptcy Court or something along those lines.

You know, with the Wartell expansion of authority, you know, that was both, I guess, an issue in the first DS and the most recent we filed. He has, I think we described it very clearly. It's plain English. It's from the exact delegation of authority. It is meant to address the

intercompany, the alleged intercompany conflicts that the White & Case team has raised; that's the purpose of it.

THE COURT: Well, I'll confess to being a little confused by the language that's in -- that probably was in the original and now even with the revisions that have been made. It uses the term conflicts committee, which I don't think is defined, at least not in the disclosure statement that I could find it, and it does talk about conflicts matters, but I don't really know what that means. I really don't know what the scope of his authority is. Is he now making decisions for Holdco with respect to the plan, or is he not?

MR. HUNTER: Yeah, we can put -- we can add language.

MR. SUSSBERG: I want to be very clear here, okay? The White & Case team from day one in this case has been seeking to effectively take over Holdco. Why do they want to take over Holdco? Because they then want to try to take over Opco. Okay?

What is typical in a delegation of authority is for an independent, disinterested party to be the one to identify the conflict. You don't want non-disinterested parties identifying the conflict and then delegating that to the disinterested director, and the delegation here didn't have that.

So what we've done is we put in place a provision that says if Mr. Wartell determines there's a conflict because someone raises an intercompany claim between Opco and Holdco, he has the authority to determine the conflict matter and then the authority to make a determination. He is not taking over ownership, operation, or overall control of the Holdco. And if we need to clarify and make that a little simpler and clearer, that's all it is, it's a typical delegation that wasn't in place. And he is a conflicts committee of one.

THE COURT: Okay. And he's a conflicts committee of one. And has he determined that there are any particular matters on which there is a conflict?

MR. SUSSBERG: Not at the moment, other than with respect to making determinations as to the releases of those handful of people. And as far as the 1L lenders are concerned, if everybody here is stipulating that the 1Ls are released, the investigation is done --

THE COURT: Right.

MR. SUSSBERG: -- it's over.

MR. HUNTER: Your Honor, on the Holdco guarantees, I think we added language on that front. If they have language that we didn't accurately capture that they have some guarantee at the Opco box on account of their Holdco claim, we'll take the language, no problem.

THE COURT: How is that being treated in the plan? Is that an intercompany claim or is that -- what is it? How's it being treated?

MR. HUNTER: It's a claim against Opco. There's a guarantee claim for a specific amount against Opco, so it would be a claim against Opco, not an intercompany claim. It gets to the question about the size of Class 6, which was about deficiency claims. And so the question of how big the deficiency claim is is a valuation issue, which I'm sure folks might have their views on. From a disclosure perspective, you know, we take the perspective, you disclose as big as it could be, right, as bad as it could be, and then if it's better for that creditor because the deficiency claim isn't as big, for example, and the $2 billion number is something smaller, that inures to the benefit of those creditors at that class. And so that's what that is, but we can clarify that.

THE COURT: Yes. So put your footnote in that says what it consists of.

MR. HUNTER: Absolutely. RSA milestones, they were extended. The RSA is still in place. You know, the 1L lenders can get up and confirm that, if Your Honor would like, but just to address that, and we can make that clear in the disclosure statement.

And then we talked about -- we talked about Mr.

Wartell and his delegation of authority. So, you know --

THE COURT: What about the 1129(a)(7) and 1129(b) treatment?

MR. HUNTER: Yes, Your Honor. I mean, this was, again, Kirkland coming in, looking at the plan, seeing if there were issues that we wanted to solve for. To the extent there is a claim from the Holdco to the Opco, it would be an intercompany claim. There's often language in our intercompany claim treatment section, which is like tax-driven, it could be reinstated, it could be discharged, you know, this and that, but this is not a tax issue to them, it's substantive.

And so the treatment that it receives, while we want to be able to do the right thing from a tax perspective, if it's not substantive, we want to make clear we can't give them something that's less than liquidation value and that, you know, just discriminates unfairly. And so that was meant to just address substantively, if there is a claim and we have GUCs that are recovering at the Opco boxes and that's what that claim is, it needs to get treatment that is consistent with (a)(7) and doesn't discriminate unfairly as compared to the other unsecured creditors, or whatever the nature of the claim is at that box. But the claim hasn't really been articulated yet and so it's hard to put too much specificity behind it, but the debtors understand that we've

got to comply with the Bankruptcy Code and that language was not meant to be like an end-around on giving them worse treatment than they should get compared to other similarly situated creditors at the Opcos.

THE COURT: Okay. I haven't seen language like that before, but --

MR. HUNTER: And, again, if the White & Case team has more specificity they want us to add, we will take that.

THE COURT: I think what I heard from Mr. Zatz is he wants to know if you think that's zero or what he's getting.

MR. HUNTER: And I think, based off the nature of the claim, if they allege it's secured, if it's unsecured, it has to get treatment that's consistent with comparable claims at the Opco entities, which we put in the disclosure statement and we think unsecured creditors, you know, as far as how we can specify their recovery from cash is relatively de minimis, plus they get claims and we can't value that. So they need to get consistent treatment if that's what the claim is.

THE COURT: Okay.

MR. HUNTER: Your Honor, any other questions from you on the disclosure statement, or do you want to move to scheduling?

THE COURT: No. Well, I guess I want to hear from

Mr. Zatz, is there additional language that you want in the disclosure statement?

MR. ZATZ: So the answer is yes, and it's really to clarify all the points that we just raised. If your question is, is there some rider we want to insert, no, we're not trying to put a position piece in here. We're trying to clarify the points that I raised.

I think I'm hearing that there is an opportunity to work with debtors' counsel and provide those clarifications. The one thing it doesn't seem like we've quite resolved is that last point about the 1129(a)(7), 1129(b) treatment. I think Your Honor has it right, we would like to know what that means. Maybe there's certain things that are still up in the air, I don't know what they are. I think what our claims are are quite clear, but if there are things that are up in the air that need to be settled at some point in advance of confirmation, they need to tell us -- let me put it this way: If the plan gets confirmed and we say where's our 1129(b) treatment, like there's no clarity as to what it is we're asking for. Those are provisions that need to be satisfied for the plan to be confirmed, but we need to know what our treatment is.

THE COURT: Okay. Show me where that is in the plan -- I do remember reading it, but show me where it's in the plan or disclosure statement.

MR. ZATZ: So, it shows up twice, Your Honor, first in the treatment section for the 2L claims. So I'm looking at the blackline of the plan that they filed early yesterday morning.

THE COURT: Yes.

MR. ZATZ: And this is on page 46 of that blackline. It's section 5.5 of the plan, subsection (a), treatment, the last part of that section. Your Honor, just stop me if I'm going too fast for you.

THE COURT: No, I'm there.

MR. ZATZ: It says, in receipt for the 2L claims, cutting to the end, or if the class votes to reject, it will get its pro rata share of the recovery, such claim it would be entitled to receive under Sections 1129(a)(7) and 1129(b).

MS. GREENBLATT: Your Honor, if I could help clarify for a moment?

THE COURT: Okay.

MS. GREENBLATT: Nicole Greenblatt from Kirkland. Sorry. So, Your Honor, this is just anticipating what's come up in other cases. If and when there's identified to be an intercompany claim and the plan language is consistent with most plans, and it says it can just be canceled or reinstated at the option of the reorganized company for tax or whatever other reasons, you will see an objection from them at confirmation that says you can't treat our intercompany like

that, right? We need recovery on it for some other reason.

So all this is meant to say is we are not trying to treat your claim any worse than any other unsecured creditor will be. So, to the extent other unsecured creditors get an allocation of trust units or something else, we'll have to build that into the plan. So it's just a fix mechanism. We're happy to include disclosure that says this may be zero, it may be nothing. Our only point is to put a mechanical fix to say this intercompany like elimination of claims will not be used against you in a way that's going to be harmful or unfairly discriminatory towards you. It is completely meant to be beneficial to Mr. Zatz's clients.

THE COURT: And how does that work with respect to the second lien claim, it's the same concept, since this is not an intercompany --

MS. GREENBLATT: No, the second lien claim is direct against the company, so it's a completely different issue. It's not an intercompany, it can't be canceled.

THE COURT: Right, so -- but that's what I'm seeing, the treatment -- if the class votes against, it gets its pro rata share of the recovery it would be entitled to receive under 1129(a)(7) --

MS. GREENBLATT: Oh, that's a different --

THE COURT: -- and 1129(b).

MS. GREENBLATT: -- that's a different -- that's a

difficult --

MR. FEINSTEIN: Yeah.

MS. GREENBLATT: -- that's a different one.

MR. FEINSTEIN: For the record, Robert Feinstein, Pachulski Stang Ziehl & Jones, for the committee. Your Honor, I think that's holdover language. Elsewhere in the plan, and we were hoping throughout, it would say that the 2L deficiency claim is a general unsecured claim. The 1129 language relates to the intercompany claim and I'd like to be heard on that for just a moment, if I could, Your Honor.

What the committee did in the last five days is what we were supposed to do, which is interact with the debtor and provide additional disclosure. And we provided a long list of Opco litigation claims that are going into the trust. We think that's appropriately specific and any more would be inappropriate. But what we don't have the benefit of is a list from the Holdco group of what the Holdco litigation claims looks like including, most importantly for this analysis, the intercompany claim, because what they're positing is that Holdco downstream a billion-plus money into Opco in connection with the take-private transaction, and that money went out to the old shareholders.

So there may be claims against the shareholders, there may be claims against the board, the sponsors. What I have yet to see articulated, Your Honor, is a claim by Holdco

against Opco on account of that downstreaming of money because the money was supposed to be downstreamed, that was how the transaction was engineered, and the money was supposed to go out to the old shareholders.

So I've been doing this a really long time, Your Honor, I've litigated many, many failed LPOs, I've never heard of a claim by the sponsor, a Holdco company against the Opco on account of money that they invested as equity in the proof of claim in connection with the LPO. So it would be really helpful if the Holdco lenders would do what the committee did, which is write it out on a piece of paper and include it in the disclosure statement, these are the causes of action we think Holdco has, including whatever claim Holdco may have against Opco, but I've yet to hear any cognizable claim articulated by anyone in this case.

That's all I wanted to add. Thank you.

THE COURT: Okay, thank you.

Okay. So, as to this particular issue, I'm hearing that needs to be deleted, that that --

MR. ZATZ: Well, it can't --

THE COURT: -- was a holdover.

MR. ZATZ: -- I don't think it can be deleted, Your Honor. So there -- just looking at section 5.5, there's the treatment of the second lien loan claim, which is now -- I say now, this was the case in the fourth amended plan, but

in the fourth amended plan there was a notion of bifurcating the claim. So the treatment section, as I read it, is about the secured portion of the claim. Then there's section (b), the deficiency claim.

THE COURT: The deficiency claim.

MR. ZATZ: That part is clear enough to me. On account of the 2L deficiency claim, we're getting our share of the general GUC pool, whatever they're getting, which right now is the Opco litigation trust.

So, back to the treatment of the secured claim, if we vote to accept, we get warrants; if we vote to reject, someone has to fill in that blank. Citing to 1129 standards I don't think checks the box.

THE COURT: No, I think, if you vote to accept, the warrants go into --

MR. ZATZ: We get a share of the warrants --

THE COURT: -- and are divided among everyone, right?

MR. ZATZ: -- a share of the warrants, yes.

THE COURT: Okay. And if you vote to reject, I guess that's the question, what do they get?

MR. HUNTER: Your Honor, then it's the -- they get no worse treatment than any other similarly situated creditor. I mean, if it's -- if they have an unsecured claim, which I think this is presupposing, they're going to

get interest in the Opco trust. So, if we need to -- if that needs to be clearer, we can do that. The Opco unsecured creditors are getting trusts that the Pachulski team negotiated for and that's what they would be getting, and it's just the value of that trust is higher if they vote in favor of the plan because there's warrants in it.

So, if there's a simpler way we can say it, we're happy to do that, and, substantively, that's what we were going for.

MR. ZATZ: It sounds like we can put this under the category of things that we can hopefully work out with the Kirkland team coming off this hearing if --

THE COURT: Well, you're going to have a couple hours to do that, but you're not going to have a couple weeks to do that. So --

MR. SUSSBERG: I was going to suggest, Your Honor, we are happy for Mr. Zatz to come on over to Young Conaway's lovely offices, we'll sit in a conference room. We'd love a deadline because, otherwise, this will go on for eternity.

THE COURT: Yeah. Well, and I have a meeting to go to. So we're going to talk a little bit more and then we're going to take a break. And you're going to have like three hours and then you're going to come back, and we'll hopefully have all this resolved.

MR. SUSSBERG: Excellent.

THE COURT: Because I think these are disclosure issues --

MR. SUSSBERG: Yeah, no need to --

THE COURT: -- and there can be cleanup -- and they can be cleanup. You know, as for the overlap of claims, they both may have claims. I'm not sure that there needs to be some way to reconcile that. I think the two of them have to talk and they're both going to take their positions and, if they both sue, some judge will figure out what that is, but I'm not sure, if they can't agree, that that's something that this plan needs to get into.

The Opco guarantee we've talked about, you all will figure that out. The new what does the 196 number mean, we were going to clarify that because the Class 6 claims have now been consolidated in some fashion. Put in some language that the RSA is still in place. And you're going to take a look at being a little more -- clarifying a little bit more Mr. Wartell's expanded role.

I think those are all the issues.

MR. SUSSBERG: Thank you, Your Honor. I don't think it will take that long, but we'll see.

THE COURT: Uh-huh. Okay.

(Laughter)

MR. ZATZ: Your Honor, perhaps this is a good time to cede the podium to Mr. Shore to talk about scheduling.

THE COURT: Yeah, let's talk scheduling.

MR. SHORE: Well, one of the good things about being a litigator for a creditor at a disclosure statement time is disclosure statements force a debtor to fish or cut bait on the record they want to make. Part of the reason we want them to make these disclosures is that's the plan they're going on, that's what they want to prove, that's what they need to prove.

Based upon this disclosure statement that we got, I guess the last one I got through was Monday morning's, there are five issues, five factual issues that Mr. West and I are going to need to be -- try if we can't get to resolution. One is our adequate protection claim that the Court may have seen, we filed it on February 13th. It's been -- I believe it's been set for April 3rd.

We are prepared to establish that our 2L position was in the money at the petition date based on the debtors' projection. Mr. Augustine is prepared to sit down in the chair and testify on that, get his deposition taken, but that needs to be done because the debtors are taking the position that the collateral now breaks in the 1L, that is that, if we were in the money on the petition date and it now breaks in the 1L, we have an adequate protection claim. That motion needs to be heard before confirmation because, if the claim is non-zero, this plan can't be confirmed, as the debtors now

disclose, because they don't have the cash or cash equivalents to pay that admin expense claim on the effective date of the plan. That's going to require -- I know Mr. Sussberg says he doesn't like when witnesses do it, but the law and the Rules of Evidence require that the Court take admissible evidence with respect to the value of an asset or, in this case, since they're all asset liens, the total enterprise value of the debtors, and make a ruling based upon the evidence in front of you.

There is no market test as of the petition date. So the debtor is going to have to get somebody, if they want to fight this, and the 1Ls, if they want to fight it. They're going to have to have their own experts and we're going to need to build time in the schedule for when that's all going to happen.

Two, we have the issue of the size of the 1L deficiency claim. The prior plans were vague as to what happened with the 1L deficiency claim. I forget, it was two or three plans ago that Willkie changed the plan to have a bifurcation of the 1L claim. At each estate, the 1Ls will now get, one, a secured claim in the value of the collateral at that estate, and a deficiency claim for the remainder. The newest disclosure statement indicates that the unsecureds are getting one percent, which means I think the debtors have come into a position, which isn't disclosed anywhere, that

the 1L deficiency claim is somewhere in the several hundred million dollar range, but we don't have disclosure around that. That I guess is going to come at the plan supplement time, which I'll get to.

That's new to us because we've been asking Willkie for months for their valuation. It's part of our disclosure statement objection, in fact. And Willkie's position that we're not giving you any valuation at all, we're going to take the position that we've had a market test.

Now, when we talk about evidence -- and I don't want to presage a motion *in limine*, but we're going to need to work that into the schedule. It is not competent evidence for someone to try to say I ran a sample process and didn't get any bids, nor is it competent evidence to say that I got bids that I did not accept. We are going to have to under this plan have a valuation as of the effective date of the plan as well to set the 1L recovery. That's a discounted cash flow, comp company, comp transaction. That's what the law requires on valuation evidence, not someone standing up and saying we ran a process, but if that's going to be their evidence we are going to put on Mr. Augustine to testify about total enterprise value as of the effective date in setting the claim. And if the debtors want to say we ran a robust process, then Mr. Augustine is going to come in and refresh his testimony as this was a process that was doomed

to value, here are the reasons why it was doomed to fail, these are the reasons why it failed, this was not an appropriate process, and it turned out it got no bids.

So that's a whole second suite of issues that have to be resolved. But the 1L deficiency claim is important for another reason because the debtors have now, as of Monday morning, raised the classification cramdown issue.

Prior plans had classified the unsecureds separately in each estate. At PSP, they were showing $5.9 million of unsecured claims; American Freight, 36.9; Buddy's, 500,000; FRG, Inc., 6.1; Vitamin Shoppe, 15.1; for a total of $65 million of general unsecured claims at those various estates. And the 2L lenders, because they had guarantees, would have had their $150 million unsecured claim at each of those estates. They changed that on Monday, so it's all one class of one debtor.

What does that mean? All unsecured creditors under this plan are getting the same treatment, they're getting the shares in the litigation trusts and $21 million, if Pachulski doesn't spend that before the effective date of the plan. Whatever is left over gets thrown in to fund that trust.

So now a rejected lessee at American Freight gets a share of the take-private litigation even though the transaction, the take-private transaction took place at the

Holdcos, which are disassociated from the company. Now, if the debtors are going to be making a subcon argument, then we can come back for confirmation sometime in December of 2029, right? I mean, that's the most fact-intensive inquiry we can do. But, if they're not going to do that, somebody is going to have to get on the stand and explain the classification scheme here because the way we see it, look at just FRG, Inc. FRG, Inc. has a $150 million unsecured claim, that's the top Opco, it has $150 million allowed unsecured claim of the 2Ls held by multiple entities within the -- our group is holding the claims in funds, which are being run by Pimco and Irradiant. So we have a numerosity there. There is one creditor, I believe, holding a $6.1 million claim.

Then we have the deficiency claim of the 1Ls, and a 1L secured claim that FRG, Inc. is, under the terms of the plan, being paid in full. If there is collateral at that estate, they will get paid out of that collateral.

So, on my math, if the 1L deficiency claim is not more than $300 million, we have a rejecting class, unsecured class, unless Your Honor allows them to gerrymander all the creditors who have general unsecured claims against an estate who were all getting the same treatment into these three classes. And, if Your Honor is not willing to do that, what we have at FRG, Inc., and, quite frankly, what we'll have at all the other estates is a plan of reorganization which gives

everything to the secured creditors over the objection or the rejecting class of the unsecureds. And whether Your Honor is going to approve a judicial foreclosure in the guise of a reorganization is all going to be dependent upon the size of the 1L deficiency claim at the effective date of the plan, which is the valuation I was talking about, but we're going to have to take depositions around the classification scheme that they've just thrown into the plan.

Four, we have inter-debtor allocations of admin expense. Again, all these debtors need to pay their admin expense -- and just to step back for a minute, at the DIP hearing, we had a big fight about why are the Holdco lenders, they were originally going to be guarantors of the full amount, and we worked back to a position, over our objection, which is up on appeal, that the DIP -- that the Holdco borrowers -- the Holdco debtors were going to borrow an indeterminate amount of DIP to fund admin expense through a complicated formula, but that the allocation was going to be TBD.

So there are potentially DIP claims at the Holdco which are going to affect the disposition of interests in the trust that I'll get to in a second of the claims. That process is not laid out anywhere in the disclosure statement, the debtors have punted on it, I have no -- maybe it's a Mr. Wartell issue, maybe it's somebody else, who's he going to

negotiate with on the other side, but we're going to have a real dispute over the attempt to allocate DIP expense to the Holdco estates. As I said before, all we ever wanted with the Holdco estates is give us our claims, and they fought us, fought us, fought us. If they're going to try to allocate -- well, not Willkie expense anymore, but any other expense up to that estate, fighting us to get back to the plan we wanted, we're going to have a fight about that.

So I have no idea when they're going to get that allocation out, but it's going to have to be, I would think, by the time of the plan supplement. They've got to put a stake in the ground as to how much DIP expense is going into which boxes so we can figure out whether on a debtor-by-debtor basis each plan is going to be confirmable. We're also going to need to know the 1Ls' position that if there's an allowed admin expense -- or, sorry, the DIP lenders' position if there's an allowed DIP expense at any particular -- at the Holdco estates that's not being paid in cash whether they're going to go forward with the reorganization or whether they're going to force a conversion of the case.

Then let's come to the Wartell actions. We've been clear from the beginning, stop the investigations, put all the claims and causes of action into a trust, nobody gets released. This is really a judicial foreclosure, in our

view, or a 7, no one is going to get releases, just put it all in. And they keep saying, you're going to get all, you're getting all you want. No, that's not true. The officers and directors who are current officers and directors, who participated in the prepetition actions, including the take-private action -- or the take-private transaction, are getting released, unless Mr. Wartell says I don't want to release them, or I'm going to release them of some claims, but not others.

So think in particular because you weren't here for the first -- Andy Lawrence testified. Andy Lawrence was the EDP at the time of the transaction, he is currently the CEO of the debtors; he is getting a release for no consideration. All of the -- the COO -- sorry, the CFO who came up with the projections for the take-private that we had this little back and forth on about why those projections failed, he's getting a release, unless Mr. Wartell says no.

Can we pause here? I don't know what the UCC is doing here. Andy Lawrence is now the CEO; he described himself as Mr. Kahn's long-term partner who worked with him on the take-private transaction. Willkie proposed in their plan he's releasing them. K&E has not changed that at all.

So what is Mr. Wartell going to do? He's going to come in and say -- I mean, look, there are two ways to look at independent directors. I have my view of independent

directors, other people have views of independent directors, but there's a substantial portion of the community that says, if you hire a hammer, it's going to hit the nail. Mr. Wartell is being asked, should Andy Lawrence get a clean bill of health or not? What is going to happen to the take-private claims against Mr. Kahn if he decides to on behalf of the debtors say that Mr. Wartell -- or, sorry, that Mr. Lawrence was lily white in this transaction? I don't know why the committee whose one percent recovery for unsecured creditors is going to be coming out of these litigation claims, is allowing that to happen, but if Mr. Wartell is going to put out a report, we don't need 30 days.

We have asked the Aiken team, can we see the documents that are going into -- that you're reviewing? No. Are you going to be reviewing privileged documents? Yes. Can we see the privileged documents that are going to be reviewed? No. Are you going to be interviewing witnesses? Yes. Are you going to allow us to participate in those? No. Are you going to let us see your witness notes? No.

So when Mr. Wartell puts out something at this date, depending on how big it is and how exhaustive it is, we are starting from zero. We will have no documents with respect to that.

Now, let me make clear one thing. It's going to be an astonishing thing to say. We don't have a single

email, text, anything related to the take-private because Willkie Farr & Gallagher, as part of their diligence process here, proposed that we would only get one custodian, Mr. Kahn. No Willkie custodian, no CFO, no Jefferies, no one. We will get one custodian and he had no documents.

So we are -- if Mr. Wartell is going to put out a report at the plan supplement deadline, it is a 60-to-90-day issue and subject to further extension depending on how big this comes in. If he gives us a hundred-page report citing, you know, documents that we haven't seen or documents -- not citing documents that he's reviewed and hasn't given to us, and 31 interviews -- they've spent two and a half -- or $2 million to date, so they've been doing something -- we're going to need real time to deal with that.

Now, of course, the debtors could make this all go away. No one is getting a release, Mr. Wartell, shut down the investigation, it all goes to the thing, but if they want to play that game and my client's path to recovery is on the claims he's trying to release, not just against Mr. Lawrence, but having an effect on all of the claims related to the take-private, there's going to be a fight over that. You don't lose $500 million on a loan given 18 months ago and say, you know what, you probably didn't do anything wrong.

The status of plan discovery in general is we're nowhere. We sent document requests and interrogatories in

the first month of the case because Willkie wanted to go ahead with a January confirmation at that time. Willkie was still producing documents last week before Your Honor's ruling, K&E was producing yesterday, we have no view as to when they're going to get to substantial completion, but I can tell you there are material deficiencies in the production to date, not the least of which is nothing related to the take-private. They still have not updated their interrogatories. We kept asking Willkie, you said it was premature to answer the plan interrogatories in November when you were going ahead with the January confirmation, could you at least update it now? No response, they've just totally blown us off on that. We still don't even have a verification of the interrogatories, and that's largely what sets the stage for discovery, right? What are we doing here, give me the basics, how can I go -- who were the people involved, right?

So we've had no depositions, we've had no interviews. I think, I think our side will need ten to twelve depositions based on these five issues: Mr. Orlofsky; Mr. Grubb, or whoever is going to be their valuation expert; Mr. Lawrence; Mr. Seton, who was the CFO at the time; Mr. Kahn, Mr. Riley, because if they're going to try to release claims against Andy Lawrence, then they're going to want to talk to Mr. Kahn and Mr. Riley; a representative of Jefferies

who led the deal.

And then we have the business plan issue, right? The foundation of either of these two valuations is going to be the business plan, right? DCF comp companies, comp transactions, all going to run off that.

We're going to need Mr. Wartell and, if he says the key to this whole thing is my discussion that I had with these three witnesses, then we're going to want those three witnesses to the extent they're not on the list.

So we have tons to do and we all have busy calendars. And we're not at the point -- the notion that we're going to move something by a week and that's going to solve these problems is not practical at all. We had in fact multiple meet-and-confers with Willkie before K&E came up when they wanted a January trial, when they wanted a February trial, when they wanted a March trial, now we have an April trial. By the way, all of these dates set without any consideration for whether we're available on those dates, this is just the date we're going forward with the confirmation. But the point I've been making for months with Willkie is that we have issues to be tried and the litigators need to get to a common agreement as to what we're going to do. We've had zero engagement -- well, except for one thing, which I'll get to.

So, I don't know, I haven't had a talk with them,

what issues do you want to try at confirmation? These are the issues I see. I have had no discussions with what other people are going to want to try. I suppose the U.S. Trustee is going to want to try some issues as well if we don't get to ground on the releases.

Then we need the sequence, so we're not wasting time, right? Again, because they're performing better than planned, could we just at least do a process that says let's complete fact discovery, let's complete expert discovery, let's have objections, and then let's have a trial. If they want to push forward on this plan that creates these issues, it seems like we should do it that way because it gets really inefficient when we're producing expert reports after the objection deadline, and then we're all supplementing and then we're getting you direct testimony a day before the hearing. There doesn't seem to be that need right now to upset that.

So then I said, once we can get to a common understanding of that, can we get to a common understanding as to how many days we need? They keep saying one day. This is not a one-day confirmation trial. This is a two-week confirmation trial, which we should do on the clock so that nobody is wasting time, but I've gotten zero engagement from the other side as to anything other, sorry, this is a one-day confirmation trial, maybe we can spill over into a second day.

Then, since all the trial lawyers are out of state, could we find out what times the Court has, can we get a block of days. You know, it's not good for you and it's certainly not good for us to leave all our boxes in here for weeks at a time as we come in for a day here and a day there. We need a block of time from the Court so that we can avoid that situation where people are traveling for a day or two. We'd prefer ten days together, but if we could do five and five or something like that, or we can come to some discussion, rational, informed discussion about how many days we need, we can come back to you with a block.

So, what do we want right now? One, K&E has to review the projections and vouch for them. And what do I mean by that? Willkie, Your Honor ruled, had a conflict, it had an actual conflict of interest. And in selecting custodians -- well, we protested the whole time. Why aren't you just using Mr. Kahn? Why didn't they use a Willkie attorney? The Willkie attorneys were all over that file. Why didn't they use the CFO who was doing the projections? But K&E is going to have to vouch for that, it is not going to be to us an acceptable answer, well, sorry, that was all Willkie's problem. They made a cut for privilege, it was a bad cut, go talk to Willkie. No, they've got to own this. They made a determination that it was a nonresponsive document and it turns out it all happens, but they've got to

own it.

So if Mr. McKane wants to stand up and say we're willing to go forward, the documents are substantially complete, then he, from my perspective, is owning the production process that occurred, which I believe was flawed.

Two, we need a firm date for the production of the valuation report that they have the burden of proof on, the Wartell investigation, if they're going to go forward with the proposed release or settlement of claims, and the allocations of inter-debtor expense. Then we need five to eight days, I think, in a block or two, 90 days out from when they've produced that stuff, subject to coming back to the Court and shortening it if it turns out that we're not having the fights we had. In other words, if they are going to go forward on their valuation trial as we ran a robust marketing process and, geez, no one showed up to -- we can cut some time out then, right? It will just be our valuation expert providing you evidence and them telling you things that are not evidence. Okay, but we need to have a discussion; we need to have a discussion around all of that.

There has been engagement -- and this is not to fault them, they've been here for three days or four days now, but the bed that was made before was none of this was addressed leading up to this, although I -- as I said, we've been talking about plan discovery since November.

THE COURT: Thank you.

MR. MCKANE: Your Honor, it is no longer morning, but it's Mark McKane of Kirkland & Ellis, proposed counsel for the debtor.

This may not surprise you, but Mr. Shore and I know each other from other cases, and if I had a checklist of like things that Chris will do, right, he -- like I hit bingo in 15 minutes --

(Laughter)

MR. MCKANE: -- because it's all about I'm going to make this as incredibly complicated as possible, I'm going to build in every aspect and potential procedural posture necessary, I want to do this like we're in Federal District Court, and we don't have a debtor that's a retail company, we have to move this forward. It doesn't mean he doesn't get due process, I get that, but you start with -- the first thing out of his mouth is I have an adequate protection claim and it's critical, and I need to establish that on April 3rd. You're like, well, wait a minute, that's to valuation trials, that's a valuation hearing as of the petition date and then a valuation hearing as of the effective date. Why would we ever have an adequate protection fight before we had the confirmation hearing and the valuation fight?

If we're going to do this -- and I think we all want to step back for a second and say like none of us want

to do this, we want to actually like see if we can get to a deal next week, declare victory, and go home, but if we're going to do this, we're going to do it once. We're going to have to do it right. I'm not certain even Mr. Shore could make it as complicated as it sounds.

But I will say this, what we do in these cases is we recognize we have a debtor, we've got DIP financing, yes, right, but we have trade creditors, and no one can ever lose sight of the fact that we, as retail debtor counsel, are extremely aware of trade credit and the importance of it, and how it can evaporate or not evaporate, and our message always is that we are on path. So all we ask is, we will work with Mr. Shore, like we always have when you set a date for confirmation and we work backwards from there.

The idea that White & Case needs 60 to 90 days after getting a valuation is bananas. And I say that because his clients have had access to full-on data rooms of this company and all of their financials since before the petition date. White & Case and Greenhill got it in December and they've been there, they know the valuation. Like we can have these like very articulate discussions about what the deficiency claims are and are not, but we can solve for that. If you set the value, we do the math, there's the deficiency claims, and we can figure out if this plan is confirmable or not, we think it is.

THE COURT: How many days do you think this --

MR. MCKANE: I was --

THE COURT: -- confirmation hearing is?

MR. MCKANE: You know, like things when you grab the podium on, two weeks is no, no, no.

THE COURT: I'm asking you, how long do you think it is?

MR. MCKANE: I would say, candidly, look, it's not a day, no way. It's a question in many ways like how does Your Honor want to run the trial. Chess clock, love it, we've done it before. It actually gets one another -- actually, we're on the same side, which is even more fun.

(Laughter)

MR. MCKANE: That's fine. Do you want to take written directs because that's a great way to streamline this.

THE COURT: Yeah, people say that, and then that's a lot of work for the Court, you know.

MR. MCKANE: I don't --

(Laughter)

THE COURT: It's like, oh, then we can do it in a day --

MR. MCKANE: Well, I could say --

THE COURT: -- like the Court doesn't have to read all this.

(Laughter)

MR. MCKANE: No, totally --

THE COURT: I love that when counsel suggests that.

MR. MCKANE: I'm always dumbstruck when we do written directs and then people want to dep designate everything from the depositions, and I'm like now you're just doubling down on the Judge.

THE COURT: Yeah, they do that too, yeah.

MR. MCKANE: So there is a manner of how you want this tried. I think it is a handful of witnesses, at best. What I do have concerns about is Mr. Shore wants to take all of the discovery necessary to build his take-private litigation that he will bring and so -- you know, in conjunction with Pachulski, and they can work on their joint complaints together now. That seems inappropriate, in part because that builds an incredible administrative expense on the case. Five days, maybe four, I think you can streamline things. I think, if you start with ten, it could easily become 15, and that's crazy. Two weeks? We haven't done a two-week, full-on like bankruptcy trial on something like a straightforward valuation in many years.

THE COURT: Well, I'm hearing different issues besides valuation, but I wanted to -- I was curious what you were going to say in response to my question.

MR. MCKANE: I'm trying to maintain credibility, Your Honor.

THE COURT: Uh-huh. Okay.

Like I say, we're going to take a break, you all are going to talk, on both the disclosure issues and on a potential schedule. I cannot -- I already have at least a one-week confirmation hearing scheduled at the end of April, so that's not happening, and I agree that I would prefer to have consecutive days.

(Pause)

THE COURT: So, subject to everyone's schedules, I'm going to say the week of May 12. You will have the entire week; it can be on the clock. And, with any luck, there will be a resolution before then.

And in coming to this date I am trying to balance the needs of the debtor to get out of bankruptcy, and bankruptcy doesn't really help any debtor, including retail debtors. The due process rights, the need for discovery, and -- but what I'd like you all to talk about is when is a realistic date that the valuation, debtors' valuation is going to be provided, that Mr. Wartell's investigation is going to be concluded and his conclusions are going to be provided, those two things in particular I think really drive what discovery is going to have to be done. I recognize there's other issues, but I think those are the two biggest

ones. And particularly for Mr. Wartell I think it creates issues because his investigation takes the time it takes and shortening it to meet the deadline, I think, is tricky. But I will say this, the debtor has chosen how this plan works, it has chosen this, I would -- rather than everything is in unless I take something out, it's sort of, no, stuff is out unless I put it in, it creates a complication.

I do -- I did notice today -- let me say this as well -- I did notice today the change in Class 6, and I haven't thought through what that means, but the debtors obviously know they will have to address that and the appropriateness of that at confirmation, and how we address the issues around impaired accepting classes, et cetera.

So I'll give you all a chance to talk about the schedule.

Mr. Feinstein, I have a question.

MR. FEINSTEIN: Yes, Your Honor.

THE COURT: And we'll get to the order, but part of the order was blessing the committee letter. And I read the committee letter and it's directed to the holders of Class 6 general unsecured claims, and it encourages them, recommends to them to vote in favor. It doesn't say anything with respect to the Opco general unsecured claims -- I'm sorry, the Holdco general unsecured claims. I don't think I've seen a letter like this before.

So I'm curious because, as I understood it -- and maybe I'm wrong, but as I understood it the committee is the committee for all of the debtors, it was appointed just for the Opco debtors. So --

MR. FEINSTEIN: I'm happy to address it, Your Honor.

THE COURT: Please.

MR. FEINSTEIN: I think it's a null set. I don't think there are non-insider, non-noteholder unsecured claims at Holdco.

THE COURT: Well, that's something that changed from the last plan to this plan. There was like 30-something million dollars at one of the Holdco debtors and now it's zero, but that changed. So --

MR. FEINSTEIN: Of claims? I know there's money captured at like the top Holdco, there's cash in there, but I don't believe, Your Honor -- and somebody can correct me if I'm wrong -- that there -- again, that there are any filed or scheduled non-insider, non-Holdco lender debt claims at any of the Holdcos.

THE COURT: Well, maybe I'm wrong, but --

MR. FEINSTEIN: So I think -- and the U.S. Trustee appointed the committee for all entities, the Holdco noteholders made it very clear to us that we had no -- it wasn't appropriate for us to be speaking for Holdco because

there were no Holdco non-insider, non-noteholder creditors. So we stuck to Opco, our letter is addressed to the Opco creditors because those are our only known constituents.

THE COURT: Okay. So to the extent that there are, which I guess you're saying there are not -- I'll have to look back, I was certain there were in the disclosure statement previously -- so to the extent that there are any general unsecured creditors at the Holdco level, the committee has no recommendation for them?

MR. FEINSTEIN: So that -- it's hypothetical, Your Honor. If somebody can show me any creditor out there that's in our constituency, we'll make a recommendation to them, but there's none scheduled and I don't believe any unsecured claims were filed.

THE COURT: Okay.

MR. FEINSTEIN: One other note --

THE COURT: Yes --

MR. FEINSTEIN: -- from that, Your Honor --

THE COURT: -- yes.

MR. FEINSTEIN: -- behind the consolidation concept --

THE COURT: Yes.

MR. FEINSTEIN: -- is that all of the unsecured creditors at Opco are behind what we believe is underwater secured debt attaching to all the assets. So, anything

that's coming their way, I don't want to call it a gift, but it was a negotiated settlement with the 1Ls to carve out value for the unsecureds. So putting it all in a single pot to be shared by the true Opco unsecured creditors and the deficiency claims seemed to be the appropriate outcome. To the extent anybody quibbles with that, we think it's a confirmation issue.

Thank you.

THE COURT: Thank you.

MR. FLIMAN: Thank you, Your Honor, very briefly, Dan Fliman, Paul Hastings, for the first lien lenders.

Your Honor, I think just one thing to give us some guidance as we go and break and talk about the schedule, we fully agree with the debtors' view that the adequate protection issues need to get teed up in connection with confirmation. There's overlap on the valuation issues. It would be helpful, at least for us, as we talk about the schedule going forward to get any guidance from Your Honor of whether the adequate protection issues will be heard in connection with confirmation or earlier, as the Freedom Lender Group has been asking.

THE COURT: I hadn't thought about it. I haven't read the motion; I know it's out there. To me, it makes sense that it's all heard together. And if I'm going to have two valuation fights at two different points in -- you know,

for two different points in time, that would be a first for me, but if we have to have it, we'll have it. But I think it ties into a confirmation issue, so we'll hear it at confirmation.

MR. FLIMAN: Thank you, Your Honor.

THE COURT: If we need an extra day for that, we'll add an extra day for it.

MR. FLIMAN: Thank you, Judge.

THE COURT: Okay. Anything else before we break?

Mr. Fox.

MR. FOX: Good afternoon, Your Honor. May it please the Court, Tim Fox on behalf of the United States, just rising briefly to indicate I know there are going to be some discussions regarding certain additional information to go into the disclosure statement and, specifically with respect to the releases, I just want to note that the U.S. Trustee had some concerns about the current version of the disclosure statement and the information on that front. We'll participate in those discussions and try to work those issues out, but I did just want to note for purposes of our objection the switch to the opt-in did eliminate the largest component of what I might be presenting to Your Honor today if that was still an opt-out, and we appreciate the parties for making that change.

There is still what we view as a confirmation-

related issue with respect to the terms of the injunction in support of the release and exculpation. My office has brought that up in a few matters recently, but we agree that we can deal with that in connection with confirmation to the extent it's still an issue, but wanted to again flag that the information regarding the releases and the interlocking piece with the Wartell investigation is something that we weren't necessarily sure there was clarity sufficient to support the 1125 standards. I think everybody is rowing in the same direction, but I did want to note that on the record before we got to the return this afternoon, just so Your Honor was aware that that was still open from the U.S. Trustee's perspective.

THE COURT: Thank you.

MR. FOX: Thank you.

MR. HUNTER: Your Honor, for the record, Derek Hunter, Kirkland & Ellis, on behalf of the debtors, just briefly. We had a few clerical changes on the order that we got from our claims agent, we don't have to do it now. I do have a redline note. Do you want that now, or we can wait and handle it when we come back, whatever you'd like, Your Honor.

THE COURT: Yeah, I'll take it when you come back.

MR. HUNTER: Okay. Thank you, Your Honor.

THE COURT: Okay. So we're going to take a break,

we will come back at 3:00 -- no, let's say 3:30. If you need more time, please contact chambers. I recognize that there may still need to be a lot of wordsmithing that has to happen after that, but let's see if we can get concepts down.

Thank you. We're in recess.

COUNSEL: Thank you, Your Honor.

(Recess taken at 12:24 p.m.)

(Proceedings resume at 3:30 p.m.)

THE COURT: Please be seated.

MR. MCKANE: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. MCKANE: For the record, Mark McKane, Kirkland & Ellis, proposed counsel for the debtors. I'm certain you cringe when you see the litigator rise in what's hoping to be an announcement of all the things that are resolved in the disclosure statement.

I think in light of what's open, we thought it would be better to address the schedule first and then walk through what we think is, like, mainly a resolution, the disclosure statement issues, and to the extent you immediately think are they just buying time to get things printed, that's also true.

THE COURT: Okay.

MR. MCKANE: So Your Honor, the -- just to level set where we are. Once you gave us the confirmation date of

May 12th for that week, we went back, had a series of exchanges with Mr. Shore, put out an initial proposal of an objection deadline that was gave him a couple -- gave him some additional time.

But more importantly, before I went to Mr. Shore, I went to the Akin team with regards to Mr. Wartell and like when can you get a -- your investigation done? When can you tell us what's in and what's out? And we started with that, and that date was not moving. And that is the date that is March 16th. It is the date that is planned supplement. Sorry, March 26th. Excuse me. It's the plan supplement. That's the -- Chris loves that. That's the plan supplement deadline that was already -- we already had.

So okay. We accept that as a fact, as a truism. So working from there, we gave the White & Case team as much time as we can. We gave them three additional weeks. And we came out and said we can have voting deadline, an objection deadline of April 23rd. That's 21 days after the report.

And with the report, I think we would be -- we'll have to work on all these interim dates in terms of actual reports. But at least based on the exchange that Mr. Shore and I had, that would be, you know, if we did that opening reports for people carrying the burden.

So we would put in our evaluation report. They would put in their adequate protection report. So for the

opening reports. To be fair, all of the interim litigation dates are not landed on. All we're trying to work on here are disclosure statement dates. We'll continue to meet and confer. And if we can't, we'll come back to you and maybe ask for a Zoom conference.

But working off of plan supplement date with those opening reports being March 26th, what the debtors are proposing is the objection deadline and the voting deadline be April 23rd. That's 21 days. Then we would ask for the confirmation brief and reply and the voting report deadline to be May 7th, consistent with the local rules. And then we could -- that's a Wednesday. And then we pick up with the confirmation hearing on the 12th for a week.

So that's where we are. We're going first because that's not where Mr. Shore is. White & Case is asking for things to come on -- come in earlier in time with regards to the extra report and other dates. We'll meet with him on that. I know they're asking for things earlier in March, and I can let him address that as he will, but I do think that this is consistent with your guidance and direction. Give them some more time, work within -- within the dates that you've set and, you know, gives us the opportunity to get the document production and other things out on the fact side as well.

Recognizing in light of how we do things here, we

may not be able to do the perfect sequencing of facts and an expert, but we will be -- we'll get the discovery done well in advance of the hearing on the 12th.

THE COURT: Okay.

MR. MCKANE: Thank you, Your Honor.

THE COURT: Mr. Shore.

MR. SHORE: All right. Just three points, Your Honor. We're asking for March 14th. And let me explain why. First, we agree with you. An investigation should take when investigation has. No one should be ordering Mr. Wartell to get his report out by that date. But if they want to start on May 12th, they got to get a report in by a certain date. And we think that's the 14th.

Point two, as I explained, we don't think we should be going forward with the report. There seems to be an easy fix here, and we can reduce a lot of this friction if we just put things in the trust. But it's their plan right now, and they have the pen on it, so.

But if we're going forward with the report, we have a ton to do. He says, oh, you get three weeks. Well, Mr. Wartell has a $2 million head start, as that presentation showed. Then we need to get his report. We need to read the report. It's the first time we'll be seeing what his views are with respect to any number of transactions.

Then we need to propound document requests. We

need to get responses and objections to document requests. We need to get the documents in. We're going to have a privilege fight. If they're going to be taking the position that Mr. Wartell can review a whole bunch of privileged documents, come to a conclusion, and tell Your Honor that based upon his review of documents, he thinks there are no claims, then they can't have it both ways. So that's -- we're just teeing that up in what they say should be a three-week period.

And then we have to take, as I said, depositions if there are going to be additional depositions because he says I have a star witness who told me what, you know, what needs to be done. I'm not -- I mean, this is federal court litigation. I think I understand the Constitution, but it is -- I'm not saying we're not willing to move, but I'm saying can we at least get it by March 14th?

And I'll point out the third reason. As of the filing of the fifth disclosure statement, Willkie, the Willkie disclosure statement that they were going forward on, which was the operative one until Monday morning, had the plan things going in on 2/6. No, 3/6. Sorry.

So all the valuation reports, all the Mr. Wartell report were going to -- they committed the March 6th. Mr. Wartell wasn't saying I can't possibly do it by that date. And we've been -- mostly my team has been working breakneck

preparing for that trial. Now for them to say, well, you know what, we decided that we need more time, that's not particularly fair.

They had committed as they had this done at the beginning of March. We're giving them an additional week. And the fact that Willkie's coming -- sorry, Willkie's out and K&E's in shouldn't make a difference now. That should have -- if he was able to make it on 3/6, he can make it on 3/14.

And by the way, not a week. I think Your Honor said six days. If we're combining the adequate protection with confirmation, I think we need that following Monday I thought you had for us so. And usually it'll get eaten up with some sort of closing and evidence stuff if we need to do that.

MR. MCKANE: Your Honor, just very briefly.

THE COURT: Um-hum.

MR. MCKANE: I learned a lot from Mr. Shore, and one of the things I've learned that he's very good at is creating false deadlines. The idea that Mr. Shore is going to start his discovery into issues that Mr. Wartell is looking at on the date that he issues the conclusion is not true. In fact, he's already asked for those materials and will -- and the company will be providing those materials now.

So it is not as if like discovery is going to kick off on the 14th, if anything, or on the 26th, it'll be supplementary to what's already been done and the vast lift is already going to be done. So I think that's not, like, a fair point.

As it relates to the trial dates, like, I wasn't trying to say five versus six. We will have a conflict on the 19th. I have to -- to the extent I'm required in the courtroom, we'll figure that out. I can't be here. But there are other things, I think, more important about what are we asking for when we came to you this morning.

We said we moved out the confirmation schedule because we did not think what was previously presented was credible, and we needed to work on it. And so we went to Wartell and said, and the Akin team give us a real date, and we got a real date. And so now we're all locking ourselves in on that. And so that's what we -- that's what we're here to do. So we just need something that we all can work with.

THE COURT: What about the valuation? When can that be done?

MR. MCKANE: Valuation would also come in on the plan supplement date.

THE COURT: Why does it have to come in then? Why can't it come in earlier?

MR. MCKANE: If you want to split the baby and say

valuation in on the 14th, you know, findings on the 26th, I will work with our team.

THE COURT: Why can't it come in sooner? I mean, I understand that Mr. Wartell is taking the time that he feels he needs to take, but the debtor wants confirmation.

MR. MCKANE: It does.

THE COURT: The debtor --

MR. MCKANE: Yeah.

THE COURT: -- needs to be prepared --

MR. MCKANE: Yeah.

THE COURT: -- so that at least discovery can start on the valuation issue.

MR. MCKANE: Your Honor, even Mr. Shore isn't asking for valuation report before the 14th. But my only point on what I'm trying not to commit to is to the extent that we're going to bring in, you know, a valuation expert, which we haven't made the decision to do yet, I can't commit somebody yet who I haven't even engaged.

THE COURT: Well, are we premature, then?

MR. MCKANE: No. No.

THE COURT: I mean, which is it?

MR. MCKANE: We'll get it done. We'll get it done.

MALE VOICE: I'll do the valuation (inaudible).

MR. MCKANE: Yeah, we'll do that. So then we're

done. 14th it is. That's Mr. Shore's valuation date.

MR. SHORE: Fine. And we can also get the Wartell report on the 14th, but I -- I guess my -- I'm a little confused here. The debtors are moving forward with an equitization transaction. They haven't engaged an expert who said that the 1L's aren't getting paid. I don't --

MR. MCKANE: To be fair, I haven't spoken with the person yet. They obviously have a team in place. Yes. Like, it's just -- it's just, frankly, me as the litigator at the podium. I'm not saying it's the debtors as a whole. That's all. Do I have -- do we have view on valuation? Of course we (inaudible).

THE COURT: Okay. Well, I think the -- I'm not going to require a deadline that doesn't work for the independent director. We will see, if we keep to our schedule, whether the discovery can get done with respect to his conclusions, which could be anywhere from I'm not going to release anybody on the list, or I'm going to release everybody on the list. And depending on what the conclusion is makes a difference.

Or the debtors can simply do what Mr. Shore says, put it all in a trust, and the independent director doesn't have to do any investigation. So we'll see because I'm not going to -- we'll see how the discovery exchange goes.

With respect to the valuation, I think it should

come in as soon as it can. I don't see any reason to hold off on the valuation because -- to be at the plan supplement. There's no magic date to that. So I think it should come in sooner so that at least discovery can get started there. And I would suggest that the debtor put its valuation analysis in on -- on the 10th.

MR. MCKANE: March 10th?

THE COURT: Um-hum.

MR. MCKANE: And Your Honor, can I get a date for the -- their valuation on the adequate protection as --

MALE VOICE: (Inaudible).

MR. MCKANE: As long as it's mutual. That helps --

THE COURT: Do you want it on the 6th?

MR. SHORE: I want the report tomorrow. But I'm willing to give them my report tomorrow. I just was dealing with the practicalities of them not having a valuation report right now. But there's -- you're not going to default them because they didn't put in a report, so I would love it as early as possible. But if they can get it by the 10th, we'll get it by the 10th.

THE COURT: Okay. For both reports.

MR. SHORE: And then maybe what we do with Mr. Wartell is we're willing to -- we can talk witness sequencing to -- we have six days. And if we have to push him to the

last day, we buy another week that way.

THE COURT: Um-hum.

MR. MCKANE: (Inaudible) we can all work together on that. I'm trying to find a sixth day that works for folks.

THE COURT: Okay.

MR. MCKANE: (Inaudible) Monday. In the meantime, we'll continue to build out the interim dates, and if we have issues in on those, if you don't mind, reach out by letter and ask for a Zoom.

THE COURT: Well -- okay. Yeah, just call.

MR. MCKANE: Sounds good. Are we good? Okay. Your Honor, I'm done stalling.

MR. HUNTER: Good afternoon, Your Honor. For the record, Derek Hunter, Kirkland & Ellis, on behalf of the debtors. We don't have redlines. That would take a little bit more time, and better to be thoughtful. But I do think we have agreement in concept with Mr. Zatz and the White & Case team on edits to the disclosure statement.

You know, appreciate everyone's efforts. We turned out a draft as soon as we got out of here. Mr. Zatz took a handful of edits to start on his end, and we kind of passed them back and forth. And so I think we're pretty close, and we have the concepts there.

You know, the key final points, which I'll just

mention on the record, Class 6 is not being substantively consolidated. It's an administrative and, you know, it's being done administratively, and you know, the votes will be tabulated separately, and that's how it's going to work, and we're going to clarify that.

On the inter-company claims that HoldCo might have against OpCo, those are getting either Class 6 treatment as an unsecured claim or if, you know, the White & Case team can articulate a theory where they're secured, then they'll get, you know, Class 2 secured treatment or whatever, you know, appropriate secured treatment they should get. And so we'll clarify that with some agreed language that we're working through.

And then we've otherwise passed some edits back and forth around Mr. Wartell and the investigation, retained causes of action, things like that. And so I think we've checked all the, you know, checked all the boxes from this morning on what needs to be cleaned up in the DS.

So what I'd suggest is we can -- I think we can work it out amongst the parties and submit a version with the edits, you know, this evening/tomorrow morning under CoC with everyone's sign off.

THE COURT: Mr. Zatz?

MR. ZATZ: Hello again, Your Honor, Andrew Zatz, White & Case, for the Freedom Lender Group. I can confirm

that based on -- we have competing markups, and we just got a consolidated one as the hearing was starting, so we're going to go through. But I think based on our conversations and the markups that we've been discussing, we have a path to resolving everything.

So we'll take the next 12 or so hours to nail it all down. And sounds like the CoC route should work fine.

THE COURT: Okay, great. Thank you for working over the recess to come to consensus on the matters you were able to reach consensus on. I appreciate that. Let's take a look at the form of order.

Oh, I'm sorry, Mr. Ward.

MR. WARD: Good afternoon, Your Honor, I didn't know when the appropriate time would be for other parties that wanted to weigh in on the matters here today to speak up. If now is the time.

THE COURT: Sure. Let's go.

MR. WARD: So we don't object to the entry of the disclosure statement. We certainly don't object to the retention of Kirkland & Ellis and recognize that, you know, parties probably have not focused so much on our issue, but we do want to raise it.

So as Your Honor may recall, I represent Buddy Mac Holdings, which is the largest franchisee of the Buddy's division. In connection with what originally was a sale and

now is proposed to be a plan, the debtors are likely to assume our franchise agreements.

And in that context, we have objected. We objected in the sale context to the cure amount saying that we're owed tens of millions of dollars resulting from American Freight's breach of the exclusivity provisions in those franchise agreements.

About a month ago, it was, I think, a month ago to the day today, we served discovery on the debtors. We served document requests and notices of deposition in connection with proving up our cure claims. Again, that was part of the sale. Now there's not a sale.

But the same fight will have to be had with respect to the plan to the extent that those contracts are assumed. So we have received only limited documents from the debtors. We got a subset of documents on the American First Financial credit documents, but nothing regarding the profits that Buddy's received.

And so just at a very high level to boil things down to, you know, to the minimum necessities, to say that American Freight breached our exclusivity, to prove up the damages that we suffered as a result of that, it would be the profits that Buddy's -- that American Freight enjoyed as a result of operating during that breached period. So we need documents regarding their profit.

We've received none of those. We've received objections to any such request. So I don't know that we need a ruling from Your Honor today. We did send the debtors a discovery response, a discovery letter. We sent that to Your Honor. We got a responsive letter from the debtors.

THE COURT: Mr. Morton filed a response.

MR. WARD: Yeah, you've probably seen those letters. So I don't know that we need a ruling today. But what we would respectfully ask Your Honor to do, candidly, is direct the debtors to not jam us on discovery because if you look at the disclosure statement, what the disclosure statement says is that cure disputes can be heard at the confirmation hearing or any date that the parties mutually agree to or on seven days' notice.

THE COURT: Well, it's not going to be on seven days' notice.

MR. WARD: Yeah, so. And I know -- and I know that the Kirkland & Ellis team isn't -- their intent, just getting into this case for five days, their intent is not to jump on jamming us on discovery. That's low, I'm sure, on the priority list. But what we can't have happen is the debtors to now, you know, queue up a cure dispute for a hearing on seven days.

So as long as I have comfort from Your Honor that we're able to have a reasonable period of time to prepare for

our depositions, that the debtors are required to produce the witnesses for the depositions after a meaningful opportunity for us to review documents on the profits that American Freight earned during the violation periods, which the debtor should produce to us in order for us to, you know, prove up our cure claim. Otherwise, we're unable to prove that up, then I think we're okay, notwithstanding the language in the disclosure statement.

But I'm really at Your Honor's direction on how you want to handle this dispute, because confirmation is coming up in a little over a month, and in order to get documents and do depositions, you know, we need time to prepare. I'm sure the debtors do as well. So --

THE COURT: Well, I'm going to give you all time to talk. I did see the letters. I will schedule a Zoom conference, if we need one, if the parties can't agree on discovery, whether that's timing or what documents are going to be produced. But why don't you all speak first?

MR. WARD: Okay.

THE COURT: And then let me know.

MR. WARD: Okay.

MR. MCKANE: Yeah. I am confident that we will coordinate on a schedule. We're not looking to jam anybody.

MR. WARD: Appreciate that.

MR. MCKANE: We've been working on a few other

things.

MR. WARD: A few other things? Isn't that a statement?

MR. MCKANE: No problem. Yeah.

MR. WARD: Thank you, both.

THE COURT: Yes.

MR. STAMER: Good afternoon, Your Honor. Mike Stamer from Akin Gump on behalf of Mr. Wartell.

THE COURT: Yes.

MR. STAMER: One very discreet issue. You heard counsel for the Freedom Lenders earlier raise an issue with the disclosure statement regarding the scope of Mr. Wartell's investigation, specifically the investigation of the first liens. They described that, and I won't -- I'll paraphrase that they thought that was a waste of money based upon the language and the DIP.

I think there is violent agreement, at least as it relates to Mr. Wartell. If the parties think it's a waste of money, we're happy not to do it. I had a conversation with Mr. Zatz. He needs to circle back on his side.

So from our perspective, it's binary. Either Mr. Wartell is instructed not to have this part of his mandate, or it is part of his mandate. And we're happy to do the investigation if people think it's necessary, but we don't want to waste people's money if we don't have to.

So one way or another, it'll be resolved in the markup, but wanted to make sure that people knew and on the record, that it's still at least a partial live issue.

THE COURT: Okay. Thank you.

MR. WARD: Thank you, Judge.

MR. FEINSTEIN: For the record, Robert Feinstein, Pachulski, Stang, Ziehl & Jones. Your Honor, I just want to address one narrow matter of something I raised before where we really don't have visibility, and it could be material.

The way that inter-company claims by HoldCo against OpCo landed, it's going to be a Class 6 unsecured claim. There is no bar date. There is no claim that's ever been asserted. There's no way of evaluating just what that claim is or how big it might be.

And it would be helpful if the architects of those claims, the authors of those claims, the HoldCo lenders, would indicate what that theory of liability is and put it in the disclosure statement. Because otherwise, we're just told that there is this HoldCo claim out there that could dilute general unsecured creditors' recovery but no disclosure of a theory of liability and that damned amount or anything else if -- it's a hole in the -- the document.

MR. SHORE: Okay, as I said earlier, I don't have a single email or text from the take-private. How am I supposed to outline the claims that exist? And if the

debtors want to set a bar date for inter-company claims, they can set a bar date for inter-company claims. That's not my doing.

THE COURT: I agree. It's the debtor's plan. If the debtor can articulate them, they should articulate them. If the debtors think there are none, they should say there are none. If there's been no bar date because inter-company claims were carved out of the bar date order, then there isn't one. But I'm not going to put that on -- I'm not going to put that on the Freedom Lenders.

MR. HUNTER: Understood. Your Honor, we can work with the parties on a solution to that, including potentially through a bar date.

THE COURT: And I assume you don't want me to put off the disclosure statement approval while we draft that, right?

MR. HUNTER: The debtors would, Your Honor.

MR. FEINSTEIN: No. But again, the only party who's ever indicated there might be a HoldCo versus OpCo claim are the HoldCo lenders without the benefit of emails. So it would be nice to hear what it is they're talking about because nobody else knows.

THE COURT: Well, this is the debtor's disclosure statements.

MR. HUNTER: Okay. Your Honor, with those

reservation of rights, I do think we will have a disclosure statement to send to your chambers as soon as possible. You mentioned the order.

THE COURT: Yes.

MR. HUNTER: We did have a couple administrative changes. I'm happy to hand those up.

THE COURT: Okay.

MR. HUNTER: And then, otherwise, answer any questions you have. If I may approach, Your Honor.

THE COURT: You may. Thank you.

MR. HUNTER: So these are mostly minor drafting changes, Your Honor. It's, you know, labeling where a debtor could be indicated on the ballot. There's an addition for the opt-ins and other minor edits that the claims agent provided. You know, these are just changes to reflect that one issue (inaudible).

THE COURT: Okay. Okay. Those look fine to me. Does anybody have any comments? Okay. Then turning to the order, and I happen to be looking at the redline, the second redline. I don't know why this doesn't have the docket number on it, but it's the most recent one that I received.

Okay. Paragraph K on, it looks like, page 5. It's been crossed out, but it looks like page 5. If you need more than 60 pages in your confirmation brief, you can ask me at the time and let me know why.

MR. HUNTER: Yes, Your Honor.

THE COURT: I note that in paragraphs 2, 3, 7, 8, and probably onwards, we have everything being approved in all respects. I just don't even know what that means. So let's just get that out. That's not a habit I like.

In paragraph 10, the committee letter, I'll authorize the committee to send out a letter. I will not approve the letter.

Okay. Paragraph 12 talks about soliciting -- mail in solicitation materials to holders of rejection claims. And then paragraph 16 seems to do the same. But I can't tell if they're consistent or not. So I'd just like y'all to take a look at that.

MR. HUNTER: Okay. We will, Your Honor.

THE COURT: Okay. Paragraph 21, and this -- okay, this provides that the debtors are not required to mail the package to creditors whose claims or interests have been paid in full. And it may sound like a silly question, but as lawyers learn and add a lot of stuff into their orders, courts learn too, right? How are you going to determine which ones have been paid in full and how are you going to let those people know that that's what you think?

MR. HUNTER: Yeah, understood, Your Honor. Definitely hypothetical. Maybe we just delete it because the process of -- it's meant to be administratively convenient,

and a process to determine they're satisfied would probably be more administratively burdensome. So maybe we just delete the language.

THE COURT: Okay. Paragraph 22 and 23 talk about the solicitation and who we're mailing things to and what the debtor and the solicitation agent can rely on. And I'm okay with -- and I'm looking at the last clause in both of those. I'm okay with, for example, the solicitation agent relying on the debtor's records. I'm okay with them relying on -- they don't have to contact somebody regarding defects or irregularities. But I'm not going to pre-bless no liability. I just don't do that.

MR. HUNTER: Okay.

THE COURT: I can't imagine there really would be any, but I'm not going to pre-bless it. Okay. Paragraph 28(a)(iii) is the same thing about satisfied claims. So just look for that everywhere.

MR. HUNTER: Okay.

THE COURT: Paragraph B, the amount -- okay. So we're talking about the amount of the claim, right? It says the undisputed, noncontingent, unpaid, and liquidated amount. I'm not sure how undisputed fits in there. Somebody files a proof of claim, it doesn't say disputed on it, right?

MR. HUNTER: Right.

THE COURT: So because unpaid, we're already

taking out. Noncontingent.

MR. HUNTER: Yeah, it's probably --

THE COURT: Can a contingent creditor vote? Maybe. They have a claim. I don't know. Never had that issue. But they have a claim. So --

MR. HUNTER: Yeah, I agree. I think it's getting to amount, not whether they can vote or not. It's not meant to invalidate it. But we could clarify that.

THE COURT: Okay. But even if it's a contingent claim --

MR. HUNTER: They get to vote.

THE COURT: They get to vote. If you want to somehow say they don't, I'll deal with it later. But in the first instance, I think they should get to vote.

MR. HUNTER: Understood.

THE COURT: Okay. Paragraph G, again, experience. Duplicative claims are only those that have the check the box that say I amended my claim because half the time, I'd look at what the debtors or the -- someone objecting to claims thinks is duplicative or amended, it's not. So it's when they check the box. Otherwise, the debtor doesn't get to decide, oh, this is duplicative. If you have a duplicative objection, file your objection.

MR. HUNTER: Yes, Your Honor.

THE COURT: Okay. And then just a general

comment, it starts at paragraph 30, is that everything needs to appear in the voting declaration. Any extensions the debtors give, any ballots that aren't counted, and why are they not being counted. But every action that's taken where somebody's vote isn't counted or somebody's given an extension of time to vote, I need disclosed.

MR. HUNTER: Yes, Your Honor.

THE COURT: Okay. Paragraph 31. Motions. 3018 motions. When are the debtors going to file objections so that people know they have to file a Rule 3018 motion? And you may not know this because y'all are so new to the case, but is the debtor really going to file any objections?

MR. HUNTER: Very rarely, Your Honor, and it's probably unlikely here. I believe in most solicitation procedures, without having parsed these, it's shortly before the voting deadline. But we have no plans to. So if we need to delete the language, yeah, just to take that issue off, I think that's totally fine.

THE COURT: Okay. Because I don't like the, you know, like one week to have to get an objection and find a lawyer and file a motion doesn't work.

MR. HUNTER: Understood.

THE COURT: Paragraph 32, the second sentence. The debtors are authorized to reject any and all ballots, not in proper form, the acceptance of which would, in the opinion

of the debtors or its counsel, be unlawful. What does that mean?

MR. HUNTER: We'll delete it, Your Honor.

THE COURT: Okay.

MR. FEINSTEIN: Your Honor, question about paragraph 31. I want to make sure we're not throwing out the baby with the bath water. Paragraph 31 says any party who wants to challenge the allowance of its claim for voting purposes can file a 3018 motion.

While the debtor may not have filed objection to claims, it may have listed claims as disputed in their schedules. And those creditors might want to vote. So they should be allowed to file a motion. Yes?

THE COURT: Yes, they could file a motion. I guess. It's really interesting. I'm not sure Rule 3018 really anticipates that, but I suppose if they want to, they could. And you're right. I don't want to disenfranchise anybody.

Yeah, I don't know that it anticipates that, but sure. Let's put -- we can find a mechanism for them to file something to challenge the scheduled amount or the disputed nature of it or whatever. So y'all can come up with that.

MR. FEINSTEIN: Thank you, Your Honor.

THE COURT: Um-hum. Thank you. Paragraph 33 with Kroll. I understand why that's here, but I actually have a

case where we're a year past the effective date. The case is still ongoing, and it could get reversed on appeal. So I don't think Kroll should be destroying ballots. I think they can come back and ask, and then we'll give them permission. But I don't want to bless it in advance because, as I said, I've got one where it would be a problem if they have done that.

MR. HUNTER: Okay. No problem, Your Honor.

THE COURT: Is paragraph 44 something that somebody wanted in? Is that like a negotiated --

MR. HUNTER: No, I don't believe so, Your Honor. I mean, I think we -- it's probably been negotiated over the years in many different precedents, and this is the creature of it. I'm not aware there's specific comments, you know, in this case, on it.

THE COURT: Yeah, let's take it out.

MR. HUNTER: Okay.

THE COURT: This order doesn't do a whole lot of things, but if we start saying what it doesn't do, then --

MR. HUNTER: Yeah.

THE COURT: Okay. Same with 49. It's just a throwaway paragraph that everybody puts in everything. Unless it was negotiated with someone, let's take it out.

MR. HUNTER: Will do.

THE COURT: Okay. Okay. I don't think I had any

comments to all the ballots or the notices. Okay, so those are my comments. Is there anything else on the disclosure statement that I'm missing?

MR. HUNTER: I don't believe so, Your Honor. We'll update the order for these comments, the dates, and, you know, of course, the disclosure statement with the parties and submit them.

THE COURT: Yes. And when you do, you'll contact chambers so we know it's here.

MR. HUNTER: Yes, Your Honor.

THE COURT: Okay. Anything else from anyone else.

Mr. Fox?

MR. FOX: Good afternoon, Your Honor. May it please the Court. Tim Fox, on behalf of United States Trustee. Just rising again to confirm our reservation of rights with respect to confirmation. It's probably unnecessary. I know Your Honor has said so on occasions before, but just in light of the resolution of our disclosure statement objection, wanted to make the record clear before we were done today. Thank you.

THE COURT: You got it. Everybody's rights are reserved for confirmation.

MR. SUSSBERG: Thank you for the time today, Your Honor, and we're going to use the time productively over the next several weeks. So thank you.

THE COURT: Excellent. We're adjourned.

(Proceedings concluded at 4:12 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling February 20, 2025
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams February 20, 2025
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Coleen Rand February 20, 2025
Coleen Rand, CET-341
Certified Court Transcriptionist
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/s/ Wendy K. Sawyer February 20, 2025
Wendy K. Sawyer, CDLT
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